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# Sexuality, Marriage, and Celibacy in Byzantine Law

THE *ALPHABETICAL COLLECTION*  
OF MATTHEW BLASTARES

Selections from a  
Fourteenth-Century  
Encyclopedia of Canon  
Law and Theology

PATRICK DEMETRIOS VISCUSO

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Celibacy in Byzantine Law*



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Fourteenth-Century Encyclopedia of  
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HOLY CROSS ORTHODOX PRESS  
Brookline, Massachusetts

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Published by  
Holy Cross Orthodox Press  
50 Goddard Avenue  
Brookline, Massachusetts 02445

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On the cover: Matthew Blastares, *Syntagma canonon*. Athos, Vatopedi 483, folio 2r (15th c.).

ISBN-13: 978-1-935317-00-5

#### Library of Congress Cataloging-in-Publication Data

Blastares, Matthew, fl. 14th cent.

[*Syntagma alphabeticum*. English. Selections]

Sexuality, marriage, and celibacy in Byzantine law : selections from a fourteenth-century encyclopedia of canon law and theology : the alphabetical collection of Matthew Blastares / Patrick Demetrios Viscuso.

p. cm.

Includes bibliographical references and index.

ISBN 978-1-935317-00-5 (alk. paper)

1. Sex--Religious aspects--Orthodox Eastern Church. 2. Celibacy (Canon law)--Orthodox Eastern Church. 3. Marriage (Canon law)--Orthodox Eastern Church. I. Viscuso, Patrick. II. Title.

LAW

262.9'819--dc22

2008036112

To my wife Susan  
and my son Sebastian





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## Principal Abbreviations

Dölger	Dölger, Franz. <i>Regesten der Kaiserurkunden des oströmischen Reiches von 565–1453</i> . 5 vols. Munich-Berlin: Oldenbourg & Beck, 1924–1965.
FBR Joannou	<i>Forschungen zur Byzantinischen Rechtsgeschichte</i> . P.-P. Joannou, ed. <i>Discipline Général Antique</i> (II–IXe s.), t. I. 2. <i>Les canons des synodes particuliers</i> (= Pontificia Commissione per la Redazione del Codice di Diritto Canonico Orientale, <i>Fonti</i> , fasc. IX). Grottaferatta (Rome), 1962.
Noailles	Noailles, P., and A. Dain, eds. and trans. <i>Les Nouvelles de Léon VI le Sage</i> . Paris: Les Belles Lettres, 1944.
PG	J.-P. Migne, ed. <i>Patrologiae cursus completus: Series graeca</i> . 161 vols. in 166 pts. Paris: 1857–1866.
Rhalles and Potles	Rhalles, G. A., and M. Potles. <i>Σύνταγμα τῶν θείων καὶ ἱερῶν κανόνων</i> . 6 vols. Athens: G. Chartophylax, 1852–1859.
Scheltema, A	Scheltema, H. J., and N. van der Wal, eds. <i>Basilicorum Libri LX: Series A</i> . 8 vols. Groningen: J. B. Wolters, 1953–1988.
Scheltema, B	Idem. <i>Basilicorum Libri LX: Series B</i> . 9 vols. Groningen: J. B. Wolters, 1953–1988.
Zepos	Zepos, I., and P. Zepos. <i>Jus Graecoromanum</i> . 8 vols. 1931. Reprint. Darmstadt: Scientia Aalen, 1962.

## Preface

In many cultures, rules govern the practice of religion. Such standards or canons often concern relationships that constitute the basis of a society. Within this context, marriage and gender relationships are often characterized as being the heart of religious law. The regulation of these relations determines social structures such as the constitution and establishment of families, the legitimacy of children, the selection of spouses, and the confinement of sexual activity to certain partners.

The present study will explore such themes in the context of late Byzantine society through the laws used in its complex judicial system. An attempt will be made to reproduce the theological presuppositions derived from canonical commentaries and the legal descriptions of gender relations, spiritual hierarchies, and religious prohibitions from the *Alphabetical Collection* of the fourteenth-century canonist Matthew Blastares. This work was chosen because of its critical importance as a summary of Byzantine legal and canonical development. Based on the focus of the present study, sections of this canon law encyclopedia will be translated which deal with sexuality, gender, marriage, and celibacy. The translation will be presented with annotations indicating sources, reign dates, and personalities.

The present work began as the author's doctoral thesis, the subject of which was further developed through publications in *Orientalia Christiana Periodica*, *St. Vladimir's Theological Quarterly*, and *The Greek Orthodox Theological Review*. In all of these efforts, I am grateful for the warm support of friends and colleagues, especially Tia Kolbaba, Claudia Rapp, Lewis Patsavos, David Olster,

Anton Vrame, the Rev. Dr. Demetrios Constantelos, Aimee Cox Ehrs, and the faculty of the Antiochian House of Studies. I would also like to thank Anna and Michael Degand for their encouragement and support of my efforts. I wish to express my special thanks to the Rev. Dr. Joseph Allen, whose loyal friendship has been a constant assistance.

Furthermore, I wish to acknowledge the generosity of Dr. Alice-Mary Talbot, Director of Byzantine Studies (Dumbarton Oaks Research Library and Collection), and the Rev. Dr. Joachim Cotsonis, Director of the Archbishop Iakovos Library and Learning Resource Center, for sharing their deep knowledge of their fields and extending the resources of their respective institutions.

Most of all, I thank my wife Susan and son Sebastian, who continue to make sacrifices that enable my scholarship.

Finally, I am deeply grateful to His Eminence Archbishop Demetrios of the Greek Orthodox Archdiocese of America for his generous financial support of this publication and personal encouragement of canonical scholarship. My gratitude is heartfelt for the spiritual guidance of Metropolitan Philip, Primate of the Antiochian Orthodox Christian Archdiocese of North America and founder of the Antiochian House of Studies, and His Grace Bishop Thomas, the hierarchical overseer of the Antiochian House of Studies and Bishop of Charleston, Oakland, and the Mid-Atlantic of the Antiochian Archdiocese. I express my gratitude for having been granted the privilege and honor of teaching canon law at the Antiochian House of Studies, where many of hours of research were performed.

Εἰς πολλὰ ἔτη Δέσποτα.

April 3, 2006  
Chantilly, VA

## Introduction

This brief essay will present systematically the historical context for the legal work of Matthew Blastares, the author of the Byzantine legal text under consideration. This examination will also explore Blastares's basic theological views on religious law, sexuality, marriage, and celibacy. On the basis of this background, the reader will have a foundation for understanding the translation of the late Byzantine work.

### THE HISTORICAL PLACE OF THE ALPHABETICAL COLLECTION

Matthew Blastares was a fourteenth-century hieromonk who resided in the monastery of the Theotokos Peribleptos of Thessaloniki and was the author of various canonical, theological, and hymnological works. His writings include theological treatises on the unionist question and hesychast controversy, synopses of canonical answers, and translations of earlier Greek patristic spiritual writings, including those of St. John Klimakos.

The work under consideration, *An Alphabetical Collection of All Subjects That Are Contained in the Sacred and Divine Canons, prepared and at the same time organized by Matthew, the least amongst Hieromonks*, is among Blastares's most well-known writings.<sup>1</sup>

1. Σύνταγμα κατὰ στοιχείον τῶν ἐμπεριελημμένων ἀπασῶν ὑποθέσεων τοῖς ἱεροῖς καὶ θείοις κανόσι, ποιηθέν τε ἅμα καὶ συντεθέν τῷ ἐν ἱερομονάχοις ἐλαχίστῳ Ματθαίῳ. Throughout this study, the writing will be referred to as the *Alphabetical Collection*. This work was published in volume 6 of G. A. Rhalles and M. Potles, *Σύνταγμα τῶν θείων καὶ ἱερῶν κανόνων* (6 vols.; Athens: G. Chartophylax, 1852–1859). No critical edition exists. The latter text was used

The *Alphabetical Collection* was a *nomokanon*, a form of canonical literature known for its combination of civil law (*nomos*) and church law (*kanon*). This particular collection is an encyclopedia of canon law that is organized alphabetically by topic in a series of chapters.<sup>2</sup>

Blastares's *nomokanon* gives the appearance of a scientific work by its topical organization and cross-referencing. Subjects are succinctly addressed with attribution of primary sources for ecclesiastical legislation. Nevertheless, while civil legislation is separated under the headings of "law" or "laws," in most cases specific sources are not noted. In general, the *Alphabetical Collection* was intended as a work of synthesis, summarizing what was thought essential for knowledge of canonical and civil legislation spanning the life of the Empire to the fourteenth century. In fact, one of the author's stated purposes was to make legal materials and their interpretation available without the need of referring to any other source.<sup>3</sup> The work presupposes no prior legal knowledge and reproduces full texts or paraphrases of laws, canons, and commentaries.

The *Alphabetical Collection's* popularity is indicated by the large number of manuscripts in which it survives.<sup>4</sup> In viewing

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for the present translated selections. In the preface of the *Alphabetical Collection*, there is a key text that dates the writing (Rhalles and Potles, 6:27):

As it would neither be the case that time escapes the one who refers to this work, he that under the light of the sun brought forth the matters of this study, measured exactly the flow of years after sixfold one thousand years, and again eightfold one hundred three and forty years.

The year 6843 by Byzantine reckoning from the creation of the world is equivalent to 1335 AD.

2. For general information on *nomokanons*, see H. G. Beck, *Kirche und Theologische Literatur im Byzantinischen Reich* (München: C. H. Beck'sche, 1959), 140–47; J. A. B. Mortreuil, *Histoire du Droit Byzantin* (3 vols.; Paris: E. Guibert, 1843–1846; repr., Osnabrück: Otto Zeller, 1966), 1:199–200; C. de Clercq, "Byzantin (Droit Canonique)," *Dictionnaire de Droit Canonique* 2 (Paris: Letouzey et Ané, 1937): 1170–76; H. J. Scheltema, "Byzantine Law," in *The Cambridge Medieval History*, ed. J. M. Hussey, vol. 4: *The Byzantine Empire*, part 2: *Government, Church, and Civilization* (Cambridge: Cambridge at the University Press, 1967), 61–62. For consideration of the *Alphabetical Collection* as a *nomokanon*, see N. Il'inskiy, *Sobraniye po alfavitnomu poryadku vsekh predmetov soderzhashchikhsya v svyashchennikh i bozhestvennykh kanonakh sostavlennoye i obrabotannoe smirenneshim ieromonakhom Matfeyem ili Alfavitnaya Sintagma M. Vlastarya* (Simferopol': 1892; 2d ed., 1901).
3. Rhalles and Potles, 6:5.
4. A listing of Greek manuscripts is found in Robert E. Sinkewicz and Walter M. Hayes, *Manuscript Listings of the Authored Works of the Palaeologan Period* (Toronto: Pontifical Institute of Medieval Studies, 1989), H 07 – K 08.

the structure of the *nomokanon*, its encyclopedic organization of ecclesiastical and civil legislation obviously reveals its nature as a practical reference work for judicial officials. The work discusses subjects of civil litigation not covered by other canonical collections, for example lease-holding and commerce, and would be useful for officials whose previous legal training was confined to ecclesiastical legislation. At the same time it provides a comprehensive overview of the Church's laws for those trained primarily in civil codes and imperial law.

A factor that promoted its use by clergymen, and thus most likely its later employment as a canonical source through the work's inclusion in ecclesiastical collections, is the fact that by the fourteenth century, the clergy had obtained a role in the administration of civil justice both as general judges and in the patriarchal tribunal.<sup>5</sup>

## THE LATE BYZANTINE JUSTICE SYSTEM

According to Byzantine historian George Pachymeres (1242–ca. 1310), in 1296 the emperor Andronikos II (1282–1328) responded to demands for improved justice by instituting a supreme tribunal composed of twelve judges, equally drawn from clergy and laity. This was said to be in response to both the judicial system's

5. For example, the work was included in the major ecclesiastical collection of G. A. Rhalles and Potles, which was published from 1852 to 1859 in Athens. For additional information on the important place of this collection in Orthodox canonical studies, see Nikodim Milaš, *Τὸ Ἐκκλησιαστικὸν Δίκαιον τῆς Ὀρθοδόξου Ἀνατολικῆς Ἐκκλησίας* (trans. Meletios Apostolopoulos; Athens: P. D. Sakellarios, 1906), 278–80. The preceding discussion of general judges and the role of the clergy in the Byzantine justice system is based on the following sources: P. B. Paschos, *Ὁ Ματθαῖος Βλάσταρης καὶ τὸ Ὑμνογραφικὸν Ἔργον Του* (Thessaloniki: Idryma Meleton Chersonesou tou Aimou, 1978); L. Petit, "La réforme judiciaire d'Andronic Paléologue (1329)," *Échos d'Orient* 9 (1906): 134–38; P. Lemerle, "Le juge général des Grecs et la réforme judiciaire d'Andronic III," in *Mémorial Louis Petit* (Bucharest: Institut Français d'Études Byzantines, 1948): 292–316; idem., "Recherches sur les institutions judiciaires à l'époque des Paléologues, I. Le tribunal impérial," in *Mélanges Henri Gregoire* (Bruxelles: Université libre de Bruxelles, 1949): 369–84; idem., "Recherches sur les institutions judiciaires à l'époque des Paléologues, II. Le tribunal du patriarcat ou tribunal synodal," *Analecta Bollandiana* 68 (1950): 318–33; idem., "Documents et problèmes nouveaux concernant les juges généraux," *Δελτίον Χριστιανικῆς Ἀρχαιολογικῆς Ἐταιρείας* 4 (1966): 29–44; I. Ševčenko, "Léon Bardales et les juges généraux ou la corruption des incorruptibles," *Byzantion* 19 (1949): 247–59; Georges Ostrogorsky, "Les juges généraux de Serrès," in *Mélanges offerts à René Crozet* (Poitiers: Société d'Études Médiévales, 1966): 1317–25; E. Schilbach, "Die Hypotyposis der ΚΑΘΟΛΙΚΟΙ ΚΡΙΤΑΙ ΤΩΝ ΡΩΜΑΙΩΝ vom Juni 1398 (?)," *Byzantinische Zeitschrift* 61 (1968): 44–70.

devastation, which was a result of corruption and the Latin conquest, and an earthquake, which was taken as a sign of divine displeasure. These judges were required to take an oath, and their decisions were to have been regarded as having the force of an imperial decision.<sup>6</sup> Nevertheless, according to Pachymeres, this reform failed “in a short time, having utterly weakened it has perished in the same manner as the vibrations of musical cords.”<sup>7</sup>

In turn Andronikos III (1328–1341), who succeeded his grandfather, also attempted to reform the judiciary. According to Byzantine historian Nikephoros Gregoras (ca. 1290/1–ca. 1358/61), these reforms were an attempt to strengthen the empire in response to military defeats in Asia Minor at the hands of the Turks and popular discontent with the corruption of judges.<sup>8</sup> Gregoras wrote of the creation of a new tribunal of four judges, one of whom is described as coming from the episcopate, and who were bound by oaths to render objective judgments as well as given “sufficiently large estates for their annual revenue.”<sup>9</sup>

The research of modern historians Louis Petit and Paul Lemerle reveal that two of the four initial appointees were clergymen: Joseph the metropolitan of Apros and Gregory Kleidas the deacon and *dikaiophylax*. The remaining members were the great *dioiketes* Glabas and Nicholas Matarangos. Two versions of the judges’ oaths survive.<sup>10</sup> In them the candidates solemnly promise to administer justice irrespective of persons and private sympathies, especially being obligated to shun all gifts and possible bribes. The penalties for the violation of the oath are confiscation of all goods, excommunication, banishment, and whatever other punishments the emperor might deem fit to exact.

Through decrees promulgated from 1329 to 1334, Andronikos III stipulated that general judges had the power to summon all persons of the empire including members of the imperial court and family, as well as provincial governors and local leaders. In

6. George Pachymeres, *De Michaele et Andronico Palaeologis Libri Tredecim* 3.16–17; Bonn, 2:235–37.
7. Pachymeres, 3.17; Bonn, 2:237.
8. Nikephoros Gregoras, *Byzantina Historia* 9.9.4–5; Bonn, 1:436–38.
9. Gregoras, 9.9.5; Bonn, 1:437–38.
10. According to Lemerle, “Le juge général des grecs,” 296, the texts of both versions were published by G. Geib in *Heidelberger Jahrbücher der Literatur* 39 (1836): 857–87. The first version is the oath taken by Joseph of Apro and found translated in Petit, “La réforme judiciaire,” 137. The second version is the oath taken by Gregory Kleidas and is also found translated, based on the Greek text of Lemerle, “Le juge général des grecs,” 297–98, in Deno John Geanakoplos, *Byzantium: Church, Society, and Civilization Seen through Contemporary Eyes* (Chicago: The University of Chicago Press, 1984), 84–85.



this manner general judges are described as having general jurisdiction and the ability to hear important cases of the empire. There are various scholarly viewpoints on other imperial judicial institutions that existed side-by-side with the general judges.<sup>11</sup>

In any case, in 1337, according to Gregoras, the emperor was forced to convene a special council of inquiry consisting of the patriarch of Constantinople and other high-ranking clergy in response to increasing complaints of the general judges' corruption.<sup>12</sup> This resulted in the condemnation of all the judges except for one, Nicholas Matarangos. According to Lemerle, despite this major calamity the institution of general judge survived after 1337. Nevertheless, certain changes took place. Although decisions were taken by all four as one body before 1337, after this date judgments could be rendered individually by each in the name of all. This development resulted from the practical difficulties in hearing important cases that were spread over the entire empire, and the increasing external and internal problems disrupting Byzantine life in the forms of civil wars and invasions.

Lemerle suggests that such practical difficulties also resulted in general judges from Constantinople traveling from place to place to render decisions in the manner of circuit judges, as well as the development of local general judges, whose locality was included in their title. These local judges in such places as Lemnos and Thessaloniki existed at the same time as those appointed at Constantinople. Constantine Harmenopoulos (1320–1383) is cited as a possible general judge of Thessaloniki.

Also noteworthy is the fact that in the fourteenth century, general judges in the principality of Serres as well as in the empire of Trebizond existed, although according to Lemerle the latter appear to have had a more limited authority than those appointed in Constantinople. George Ostrogorsky suggests that the limited position of the general judges at Serres and Trebizond, as revealed in certain later fourteenth documents, may have reflected the contemporary development of this institution at the Byzantine capital. In any case, Lemerle's research shows that clergymen continued to be appointed as general judges at Constantinople, as exemplified by Anthony of Larissa and Makarios of Nikomedia, both of the late fourteenth century.

According to Lemerle, ecclesiastic participation in the judicial system not only included official appointments such as general

11. Compare for example Ševčenko, "Léon Baradales," 248–51, and Lemerle, "Documents et problèmes," 32–34.

12. Gregoras, 9.3.4; Bonn, 1:536–38.

judges, but also was reflected in the importance of the patriarchal tribunal. Although the Church is said to have exercised considerable influence even during times of stability, this increasing prominence took place in periods during which the imperial government was not capable of adequately administering justice.

Lemerle distinguishes four types of cases that the patriarchal tribunal dealt with: questions concerning marriage; cases involving widows and orphans, especially dowry rights and the property of minors; incidents of usury, a practice that the Church condemned; and, on occasion, diverse affairs that fell more properly within the jurisdiction of the state, e.g., rights of passage, land ownership, and contracts. Lemerle believes that those cases that fell within imperial jurisdiction were handled by the Church especially during periods of turmoil, for example, during the struggle between John VII (1390) and Manuel II (1391–1425) at the end of the fourteenth century. Occasionally, the patriarchal tribunal and imperial courts would have conflicts, but more often they collaborated or acted independently from one another. The patriarchal decisions were usually carried out by ecclesiastical officials, and its means of enforcement were limited to spiritual ones, the most severe of its penalties being excommunication.

Within this context, it can be reasonably inferred that the features of the *Alphabetical Collection* noted above would have made the *nomokanon* a useful reference work for clergy participating in the fourteenth-century Byzantine justice system as general judges. Due to the high volume of canonical material included, it also appears appropriate to conclude that such a work, if used by members of the judiciary, would be especially useful to the patriarchal tribunal, which, as seen above, dealt with matters pertaining to both spiritual and civil affairs.

With the eventual conquest of the empire by the Ottoman Turks in the fifteenth century and the imposition of the Millet system, Orthodox religious officials were required to administer justice for their coreligionists when their legal affairs did not fall under the Islamic judiciary. The continued use of *nomokanons* such as the *Alphabetical Collection* provided useful, concise, and respected sources of law and resulted in their inclusion in later collections of authoritative canonical sources by the Church.<sup>13</sup>

13. For a good summary of the legal prerogatives of the Ecumenical Patriarchate under the Millet system, see Alexis Alexandris, *The Greek Minority of Istanbul and Greek-Turkish Relations 1918–1974* (Athens: Centre for Asia Minor Studies, 1983; 2d ed., 1992), 21–25. For a more detailed study of the influence and use of the *Alphabetical Collection* and other *nomokanons* during the post-Byzantine period in Ottoman Empire, see Michael Merlino, *The*

## A GENERAL VIEW OF LAW

The preface of the *Alphabetical Collection* contains a discussion of the nature of canon law and its development, a history of ecclesiastical and civil law, and an examination of Church-state relations.

Blastares treats the canons as an extension of the divine redemption. They are viewed as an incarnation of divine truth. He describes the development of ecclesiastical law as the growth of the theandric commonwealth of the Logos in the world. The canonist likens this development to the flowering of a plant.<sup>14</sup> In course of human time, the Logos is said to preserve canon law or the flower of God through the support of His grace.

The canons are compared to the "precious stones" that are "varied" and "differentiated," and over whom the "gates of Hell" will not prevail.<sup>15</sup> This appears to be a reference to Matthew 16:18, where according to late Byzantine interpretations, the faith of Peter, expressed in his confession, is confirmed by the Lord as being the foundation upon which the Church will be built.<sup>16</sup> The words "precious stones" also suggest a reference to 1 Corinthians 3:11–14, where "precious stones" are mentioned in relation to the building of a house constructed on the foundation of Jesus Christ.

This foundation is very likely understood by the hieromonk as the rock of faith that will be capable of withstanding the fires of

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*Post-Byzantine Legal Tradition in Theory and Practice* (master's thesis, Bkent University, Ankara, 2004). Regarding the influence of Blastares's work in the Slavic world, the Serbian translation of the work is dated 1347/48 by the historian Stojan Novaković, and was used in the empire of Stephen Dushan (emperor of Serbs and the Rhomaioi, 1345–1355). The translation exists in a shorter and longer version. In the shorter form, most ecclesiastical material was eliminated, although according to Alexander Soloviev, canonical provisions regarding marriage were retained. Novaković believes that the translation was undertaken because the Serbian state was expanding into areas that had formerly belonged to the Byzantine empire in which Blastares's work was popular, and that Dushan desired to adopt the strong points of the latter's judicial system (Dragoljub Dragojlović, "Dispositions légales concernant les néomanichéens dans les nomocanons byzantins et slaves," *Balkanica* 3 [1972]: 135–55, especially 151–55). Translations into other slavic languages and the general influence of Blastares's legal work are also discussed by A. Soloviev, "L'oeuvre juridique de Matthieu Blastarès," *Studi Bizantini e Neoellenici* 4 (1936): 698–707.

14. Blastares states that the canons "blossomed" (ἤνθησε), Rhalles and Potles, 6:1.
15. Rhalles and Potles, 6:1.
16. For a general discussion of Byzantine thought on this subject, see J. Meyendorff, "St. Peter in Byzantine Theology," in *The Primacy of Peter in the Orthodox Church* (Bedfordshire, England: The Faith Press, 1963; 2d ed., 1973), 7–29. For a modern Orthodox discussion, see P. Boumis, "The Rock (Petra) of the Apostle Peter," *Ἀρχαῖον Ἐκκλησιαστικὸν καὶ Κανονικὸν Δικαίου* 34 (1984): 38–49.

that day. Blastares's reference to variation and differentiation recalls Romans 12:6, where the Church is described as one body consisting of members with different gifts or *charismata*. The canonist draws a parallel between the structure of the Body of Christ and the canons by stating that the latter are "placed together" and "fitted" to compose the "economy of the Church."<sup>17</sup>

Blastares describes this flower of God as "sharing no fruit of time's scheme."<sup>18</sup> This suggests a reference to John 4:36, where "fruit for eternal life" is contrasted to that of temporal life. In relation to the theandric commonwealth of the Logos, the canons have an eternal significance and value inasmuch as they represent its divine nature. Civil legislation is viewed by the canonist as the human dimension. The commonwealth is identified as a Christian empire combining divine and human law in a manner similar to the Chalcedonian definition of the two natures of Christ.<sup>19</sup>

The divine nature of the canons raises the question of whether all canons must be valid and equally applied. Blastares appears to resolve this problem in his description of a synod in Carthage (257) under Cyprian (ca. 200–258):

The synod in Carthage, which had Cyprian the Great as an exarch, is recorded to be more ancient than all the ecumenical and local synods. It also increased in number to eighty-four bishops. Indeed they produced only one decision in the form of a canon, that those who were formerly baptized by all heretics and schismatics, who enter the Catholic Church, were to be baptized again (meaning, in an obscure way, the schismatics around Novatian). For at that time, his heresy intruded into the Church perniciously. Basil the Great has also made mention of this decree in his first canon, citing it out of approval but at the same time decreeing it null on account of economy (οἰκονομίας δὲ χάριν). Indeed, the Second Ecumenical Synod in its seventh canon de-

17. "τῆς Ἐκκλησίας ὑφαίνοντες οἰκονομίαν," Rhalles and Potles, 6:1.

18. Rhalles and Potles, 6:1.

19. In Blastares's work, the word πολιτεία is used to designate the empire, see, for example, Rhalles and Potles, 6:102, 158. The human is called to conform to the divine nature in a type of civil dyophysitism. This appears to underlie Blastares's statement that civil legislation is cited in his work when it "aids and agrees" with the canons (Rhalles and Potles, 6:5):

I have considered it worthwhile to also join to related chapters of canons both brief and abridged ones of civil legislation that aid and agree with the sacred canons, and witness superabundantly to their soundness.

creed against it. On account of this, mark you, the Sixth Ecumenical Synod stated that the canon which was set forth by these fathers, prevailed only in their own localities and according to the custom that was handed down to them. For this canon, as it appears, followed logically from circumstances at that time. Wherefore, the changing of these circumstances also changed this canon to no longer be in effect.<sup>20</sup>

The solution offered by Blastares is that canon law expresses God's truth perfectly, given the time and circumstances. If the circumstances change, certain canons may not express the truth and therefore can be suspended on the basis of "economy." The hieromonk is expressing the notion that the incarnation of the faith or divine truth, which takes place in the canons, occurs according to the different circumstances in which the Church sojourning in the world finds herself.

Ecclesiastical legislation expresses spiritual truth given different material circumstances. If these conditions change, a specific canon may no longer be applicable and thus becomes null. The reduction of canon law to purely temporal or worldly law is avoided because its source is divine and expresses divine truth, although only in relation to particular historical circumstances and conditions. In this sense, the canons are a divine-human reality parallel to the two natures of the Savior and are an expression of the Church's theandric economy.

One of the major theological themes of the preface is the defeat of Satan. Blastares describes the overcoming of the devil as a withering into "nonexistence," which the evil one is said to possess by nature. Satan makes two attempts to prevail. The first was made in the temptation of the Adam and Eve, the second through "counterfeit and deceptive dogmas." However, the evil one is discovered by the Church to be a "wolf," and his efforts are consequently frustrated. The leaders of the heresies are cast in the role of Satan's servants and are portrayed as wolves in the midst of the Lord's flock.

Blastares states that Satan is discovered and defeated through ecumenical and local councils. The ecumenical synods are defined as synods assembled by the command of the emperor, inspired "by the Holy Spirit," and composed of bishops from the entire empire. The clergy that attend the councils are described as presiding over a "flock" entrusted to them and as submitting to the apostles in the performance of this duty. This submission to the apostles refers to

20. Rhalles and Potles, 6:8.

the apostolic charge of Christ to sustain the flock of the Church.<sup>21</sup> The canonist believes that this divine injunction applies to the successors of the apostles: the bishops of the Christian commonwealth.

Local synods are composed of "bishops from an eparchy who are assembled to their exarch, not gathered from the entire empire." They are concerned with the "confirmation of what was determined by previous synods," the "purification" or correction "of they that dare to oppose these things," and the treatment of those "canons and questions that contribute to the good order of the Church." The words "good order" imply that this legislation mainly concerns administration. These canons uproot heresy and serve as guides to salvation. Blastares likens them to rods, and he states that they are used to beat the "tyrant."<sup>22</sup> This comparison is expanded in his later discussion of the word "canon."

In contrast, the ecumenical council is described as making "better judgment" regarding faith and heresy. Heresy is identified with "moral defilement" and is said to be repelled by the "arms of truth" or the articulation of the faith. The main provenance of the ecumenical synod is "general dogma" rather than administration.

In both cases, Blastares states that the synods legislated universally:

They legislated for masters and slaves, rulers and the ruled, parents and children, men and women, married and unmarried, continent and wanton, wise and ignorant.<sup>23</sup>

All are called to obey them fully "since much is necessary for commanders or soldiers."<sup>24</sup>

The hieromonk traces the course of the victory over the devil. The establishment of the divine *kerygma* is described as escaping Satan's notice.<sup>25</sup> The blood of Christian martyrs during the Roman

21. John 21:15.

22. Rhalles and Potles, 6:2.

23. Rhalles and Potles, 6:4.

24. Ibid. However, greater requirements of virtue are made for those in the priesthood. Clergy are likened to the angelic orders (Rhalles and Potles, 6:4):

Greater zeal for these things was appointed in the case of the royal priesthood of the Church, so that those who are allotted to draw near to God might not be seen as unworthy to draw near Him by living contrary to His will. They are not to put forward as an excuse the burden put on nature, but their nobleness of the soul is to become as much as possible like that of the angels surrounding God and they are to represent that which is angelic, with matter (μετὰ ὕλης δεικνύναι).

25. Rhalles and Potles, 6:3.

persecutions is seen as necessary for the struggle on behalf of the truth. This narrative culminates in a description of an assembly composed of "valorous ones" held at the conclusion of these trials, a clear reference to the First Ecumenical Council of Nicaea, many of whose bishops underwent the persecution of Diocletian:

Accordingly, when these valorous ones had assembled in common, the Church at this time established the sacred and divine canons as divine oracles that were brought down from above, no less in honor and veneration than the divine Gospels, since the latter were simply the sources and roots of the former.<sup>26</sup>

Canon law is portrayed as the fruit of the Church's struggles and the foundation of its economy on earth. In particular, the canonist affirms the divine nature of the canons by viewing them as an extension of the Gospel and thus of the redemption worked by the Logos.

After having discussed the councils as a source of canon law, Blastares turns to the writings of the Fathers. Patristic writings are regarded as canons if they bear "the type" or form of a canon and are "adopted" as laws through "receptions of synods."<sup>27</sup> By receiving or acknowledging certain texts, Church councils recognize the "kinship" of these writings to synodal "inquiries" or decisions, as well as their divine "inspiration" and consequent "recognition by many witnesses." This last condition entails continuous use of a writing by the Church; in Blastares's poetic terms, a "showing forth through everything just as stars."<sup>28</sup> The hieromonk cites Basil the Great and Gregory the Theologian as examples of Fathers who produced canonical writings.<sup>29</sup>

Blastares finally discusses the importance of canon law within spiritual life. He refers to the "foster children of piety" who bind "the perpetual motion of the soul" to the canons. The phrase "foster children of piety" expresses the notion that Christians in general are adopted through grace as progeny of God. Perpetual motion refers to spiritual progress. This progress advances by recognition of "legitimate doctrines" and "continued practice in good thoughts or works."<sup>30</sup> The canons are described as a means

26. Ibid.

27. Ibid.

28. Ibid.

29. Ibid. However, Blastares does not mention Gregory the Theologian as a canonical writer in the section of the preface dealing with the history of ecclesiastical legislation.

30. Rhalles and Potles, 6:4. Spiritual advancement results in "inspired visions from the sight of dreams" ("τὰς ἐξ' ὄψεω σ' ὀνείρων φαντασίας ἐνθέου").

of distinguishing “the straightforward from the crooked and the genuine from the false.”<sup>31</sup> Ecclesiastical laws are said to be more accurate than “any stone of Lydia.”<sup>32</sup> They are also described as “medicines” and “prescriptions” used for the treatment of the spiritually “diseased.” Canon law is a prescription in determining penance for the correction of moral faults.

Blastares sums up his thought on the spiritual nature of the canons in the following way:

Thus we have been persuaded that these guides and leaders of a pious commonwealth, which show the way to eternal life, are a reward and gift of God, a dogma of noble and God-bearing men, a new covenant of the Church, and a correction of voluntary and involuntary sins.<sup>33</sup>

The hieromonk ends this section of his preface by giving a definition of the word “canon”:

The Fathers who used this figurative expression, named their own decrees canons, from the metaphor of a straight rod, which was customarily used by those that pursued the arts of craftsmanship for the straightness of woods or stones or whatever else. For when placed upon materials that were being finished, it made these straight and even for their accurate joining together.<sup>34</sup>

Blastares thus considers ecclesiastical laws to be guides that allow for the correct shaping of each individual member of the Church

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This reference to “visions” may be influenced by the notion of divine contemplation or θεωρία discussed by St. John Klimakos in the *Ladder of Divine Ascent*, a work that Blastares is credited with translating into vernacular Greek. St. John describes contemplation as resulting from the purification of mind and body (PG 88:1148):

Therefore, this is the step of the uncompleted perfection of the perfect, as one that tasted of it instructed me. Thus it (dispassion, ἀπάθεια) sanctifies the mind and snatches (ἀφαρπάζει) it away from material things, so that for most of the life in the flesh, after apprehension (κατάληψιν) of this heavenly harbor, what has removed a man into heaven will raise him to contemplation (θεωρίαν).

31. Rhalles and Potles, 6:4.

32. Ibid.; ἡ Λυδία λίθος was a stone used to determine the presence of gold. See Henry George Liddell et al., eds., *A Greek-English Lexicon* (Oxford: Clarendon Press, 1968), 1064.

33. Rhalles and Potles, 6:5.

34. Rhalles and Potles, 6:5–6.



in order that they might be joined into one body or structure built on the foundation of Christ, the Cornerstone.<sup>35</sup>

Blastares's preface also includes a history of ecclesiastical and civil law.<sup>36</sup> He states that the purpose of this history is to lead to a greater understanding of the canons. The hieromonk proposes to follow a chronological order, noting the emperors during whose reign canons were composed.

Blastares states that in his *Alphabetical Collection* he has utilized the texts of the original canons, canonical commentaries, and the civil legislation that "aids and agrees with the sacred canons."<sup>37</sup> The sources of Blastares's ecclesiastical material can be identified through his history of Church law.<sup>38</sup> These sources consist of the Canons of the Holy Apostles (to which he attributes apostolic origin), ecumenical councils, local councils, and Fathers. The ecumenical councils cited are: Nicaea I (325), Constantinople I (381), Ephesus (431), Chalcedon (451), Constantinople II (553), Constantinople III/Penthekte (680–681/691–692), Nicaea II (787), and "the First and Second Synod, which is being called Holy and Ecumenical" (861). The local councils include: Carthage (257), Antioch I (268), Ancyra (314), Neocaesarea (315), Antioch II (341), Sardica (343), Laodicea (later fourth century), Gangra (ca. 340), Carthage (419), and the Photian Synod (879–880). The Fathers mentioned include: Dionysios of Alexandria, Peter of Alexandria, Athanasios the Great, Basil the Great, Gregory of Nyssa, Timothy of Alexandria, Theophilos of Alexandria, Cyril of Alexandria, Gennadios of Constantinople, and Tarasios of Constantinople. There is also an excursus on anathema directly after his treatment of Gangra.<sup>39</sup>

The canonist derives material for his treatment of the ecumenical councils in the preface from a treatise attributed to St. Photios, Patriarch of Constantinople (858–867, 877–886), *Concerning the Eight Ecumenical Synods*.<sup>40</sup> This work is in fact an excerpt

35. Eph 2:20; 1 Pet 2:6.

36. Rhalles and Potles, 6:6–26, 27–30.

37. Rhalles and Potles, 6:5.

38. Rhalles and Potles, 6:5–27.

39. Rhalles and Potles, 6:16–17; The order of Blastares's history is as follows: Holy Apostles, Carthage I, Dionysios of Alexandria, Antioch I, Peter of Alexandria, Ancyra, Neocaesarea, Nicaea (325), Antioch II, Sardica, Laodicea, Athanasios the Great, Basil the Great, Gregory of Nyssa, Gangra, an excursus entitled "Concerning anathema," Constantinople I (381), Timothy of Alexandria, Theophilos of Alexandria, Cyril of Alexandria, Ephesus (431), Carthage II, Chalcedon (451), Gennadios of Constantinople, Constantinople II (553), Constantinople III (681), Penthekte (691–2), Nicaea II (787), Tarasios of Constantinople, the First and Second Synod, and "the Synod concerning Photius."

40. Rhalles and Potles, 1:375–88.

from Photios's letter (ca. 865) to Michael of Bulgaria (852–889).<sup>41</sup> Photios's observations on the councils are abridged. Blastares tends to summarize points concerning dogma or detailed descriptions of controversies.<sup>42</sup> Much of the material on local synods is drawn from the commentaries of Theodore Balsamon and John Zonaras.<sup>43</sup> Blastares relies heavily on the commentaries of both canonists throughout the *Alphabetical Collection*.<sup>44</sup> V. Narbekov notes that although Blastares refers to Balsamon by name only six times and Zonaras twice, the hieromonk constantly quotes or paraphrases them either in his interpretations or his summaries of ecclesiastical and civil legislation.<sup>45</sup> It is not clear from which source Blastares derives his treatment of the Fathers; however, his excursus on anathema has been taken partly from the introduction of Zonaras and Balsamon to the canons of Gangra.<sup>46</sup>

Certain scholars are mistaken in seeing similarities between Blastares's history of civil law and the introduction of Byzantine historian Michael Attaleiates (eleventh century) to his poem on the history of law.<sup>47</sup> The only similarity between the two works is the fact that both follow the same chronological order in their historical accounts.

Although a historical analysis of Blastares's account is beyond the scope of this theological study, several points may be noted. In the first place, the dates of several synods are incorrect. The First

41. B. Laourdas and L. G. Westerink, *Photii Patriarchae Constantinopolitani Epistulae et Amphiloquia* (5 vols.; Leipzig: B. G. Teubner, 1983–1985), 1:1–39.
42. This is evident regarding Constantinople I, where Blastares edits Photios's account in order to present only the main points concerning the pneumatological controversy and the disputes revolving around the presidency of the council.
43. For example, his treatment of Carthage II strongly resembles the commentaries of Balsamon and Zonaras on the same subject; cf. Rhalles and Potles, 6:20 and 3:286–87.
44. The point is illustrated in general by Vasiliy Narbekov, *Tolkovaniye Bal'samona na Nomokanon Fotiya* (Kazan': Tipografiya Imperatorskago Universiteta, 1889) and in detail by S. Troianos, "Περὶ τὰς νομικὰς πηγὰς τοῦ Ματθαίου Βλάσταρη," *Ἐπετηρὶς Ἑταιρείας Βυζαντινῶν Σπουδῶν* 44 (1979–1980): 205–329. Balsamon's commentary on the *Nomokanon of Twelve Titles*, attributed to Photios, was also used by Blastares as a major canonical source. This *nomokanon* was not solely the work of Photios but that of many redactors, one of the last being Theodore Bestes (ca. 1090); for additional information, see Beck, 146.
45. Narbekov, 283–84; Troianos, 308–29; the point is proven in my doctoral thesis, *A Byzantine Theology of Marriage: The Syntagma kata stoicheion of Matthew Blastares*, PhD diss., The Catholic University of America, 1989.
46. Rhalles and Potles, 3:96–100.
47. J. Herman, 921; J. A. B. Mortreuil, 3:459; Michael Attaleiates, "Ποίημα Νομικόν," in *Jus Graecoromanum* (eds. I. Zepos and P. Zepos; Athens: Georgos Fexis, 1931; repr., Darmstadt: Scientia Aalen, 1962), 7:411–17.

Ecumenical Council is dated 318 and the Third, 421.<sup>48</sup> Constantinople II is given two dates, one incorrectly in 545, according to a mistake in reckoning the reign of Justinian I, and another correctly in 553.<sup>49</sup> Constantinople III is incorrectly reckoned in either 694 or 702, or even in 667 if one estimates by what the hieromonk says about Nicaea II.<sup>50</sup> Finally, the First and Second Synod is dated 844 instead of the correct 861.<sup>51</sup>

Secondly, certain passages in the preface lead one to believe that the *Alphabetical Collection* included a collection of conciliar and patristic canons. These texts occur as follows:

(1) For Basil the Great:

The present *Alphabetical Collection* contains his three canonical letters to the Holy Amphilochios, Bishop of Iconium, which are divided into eighty-four canons. In addition to these, some other chapters concerning different subjects are also included.<sup>52</sup>

(2) For Gregory of Nyssa:

To present every proof of this as briefly as possible, the present collection includes his canonical epistle to Letoios, Bishop of Melitene, with the other works.<sup>53</sup>

(3) For the Second Ecumenical Council:

Of these, the present *Alphabetical Collection* bears only seven canons that have been handed down.<sup>54</sup>

However, these passages may also be evidence of Blastares's plagiarism of an unidentified source, which was most likely simply a canonical collection. Manuscript study will be necessary to fully resolve this question.

Thirdly, in conformity with the Byzantine canonical tradition, Blastares regards the synod in Trullo as part of the Sixth Ecumenical Council.<sup>55</sup> In his description of this council, an emphasis is placed on justifying its legitimacy. This chiefly revolves around Roman representation at the synod. Blastares claims that the Latins were fully represented despite their supposed claims to the contrary. He also adds that the gathering was ecumenical because

48. Rhalles and Potles, 6:11, 19.

49. Rhalles and Potles, 6:22.

50. Ibid.

51. Rhalles and Potles, 6:25; P. B. Paschos addresses these points in greater detail.

52. Rhalles and Potles, 6:14.

53. Ibid.

54. Rhalles and Potles, 6:19; cf. Paschos.

55. Rhalles and Potles, 6:23–24; see the commentaries of Zonaras and Balsamon on this point in Rhalles and Potles, 2:299–301.

the Holy Fathers who were present clearly recognized their own ecumenicity.<sup>56</sup>

Finally, the hieromonk acknowledges some degree of doubt concerning the status of the First and Second Synod. The pertinent section of his preface is entitled "Concerning the First and Second Synod, which is said to be Holy and Ecumenical."<sup>57</sup>

The purpose of his historical account is stated in the third part of the preface, entitled "A Summary of the *Alphabetical Collection*":

This narrative of the history of the holy synods after the divine apostles has been related. Know ye that these were the causes of the gatherings and which canons each synod handed on, and which some of the divinely sweet men in turn composed personally.<sup>58</sup>

In general, Blastares appears to accomplish his purpose of giving a history of canon law according to chronological order, even though he neglects to note the imperial reigns for the later councils and for all of the Fathers.

As noted above, Blastares presents a brief excursus concerning anathema. Its theme is the needlessness of excommunication.<sup>59</sup> The hieromonk claims to base himself on a homily of John Chrysostom (ca. 347–407) entitled "Concerning That One Must Not Anathematize" ("Περὶ τοῦ μὴ δεῖν ἀναθεματίζειν").<sup>60</sup> Blastares states that "the faithful man" should not pronounce an anathema because the one who is being anathematized is not only separated from God but also assigned to Satan and thus made an "enemy of Christ."<sup>61</sup> The hieromonk believes that the anathemas pronounced by Chalcedon and Gangra were "not proportionate" punishments.<sup>62</sup>

In a brief section entitled "A Summary of the *Alphabetical Collection*," which is placed between his histories of canon and civil law in the preface, Blastares continues his discussion of anathema

56. Rhalles and Potles, 6 24.

57. Rhalles and Potles, 6:25.

58. Rhalles and Potles, 6:26.

59. Rhalles and Potles, 6:16–17.

60. Rhalles and Potles, 6:16; a homily attributed to Chrysostom entitled "Περὶ τοῦ μὴ δεῖν ἀναθεματίζειν ζῶντας ἢ τεθνηκότα" is found in PG 48:945–52. However, the work is ascribed to Flavian I of Antioch (381–404), by Maurice Geerard, ed., *Clavis Patrum Graecorum* (Brepols-Turnhout, 1974), 2:3430.

61. Rhalles and Potles, 6:16–17; a similar point is made in the homily attributed to Chrysostom, PG 48:948:

Therefore, what does the anathema that you say mean but "let him be consigned to the devil, no longer have an opportunity for salvation, and become an enemy of Christ."

62. Rhalles and Potles, 6:16.

by providing instances for which it is considered justified.<sup>63</sup> Excommunication is necessary in the case of “the already putrefied of the members” in order to avoid the contamination of a communion. Nevertheless, the mercy of God seeks out those that are lost, and “indeed also those that wonder (τοὺς θαυμάσαντας), who very lately (πρόην) held the works of demons in admiration.”<sup>64</sup> This may be a reference to the hesychast controversy. The term “those that wonder” could refer to the Palamites who claimed to see the uncreated light of Tabor. According to evidence presented in the letters of the Byzantines, Gregory Akindynos (d. 1348) and Joseph Kalothetos (d. after 1355/56), Blastares may have been an anti-Palamite up to 1345/46.<sup>65</sup> Although the *Alphabetical Collection* was written in 1335 shortly before the outbreak of the controversy, Akindynos’s characterization of the hieromonk Matthew as an anti-hesychast when the “newfangled talk . . . was still indistinct” allows for the possibility that if his addressee was Blastares, “those that wonder” might be identified with those practicing hesychasm prior to the

63. Rhalles and Potles, 6:26–27.

64. Ibid.

65. See the discussion of P. B. Paschos, Ὁ Ματθαῖος Βλάσταρης καὶ τὸ Ὑμνογραφικὸν Ἔργον Του (Thessaloniki: Idryma Meleton Chersonesou tou Aimou, 1978), 76–83. Certain letters of Akindynos and Kalothetos make mention of a hieromonk Matthew residing in Thessaloniki. In particular, correspondence of Akindynos dated 1345/46 and 1347/48 appears to imply that this hieromonk had lately defected and become a supporter of Palamas. A letter of Kalothetos dated 1346 has been interpreted as referring to Akindynos’s missive and as complimenting Matthew’s change of position. However, definitive evidence does not exist to link Blastares with the addressee of this correspondence. Editions of these letters may be found in the following: Angela Constantinides-Hero, *Letters of Gregory Akindynos* (Washington, DC: Dumbarton Oaks, 1983); R. J. Loenertz, “Acindyni Epistulae Selectae IX ex Codice Veneto Marciano 155,” *Ἐπετηρὶς Ἑταιρείας Βυζαντινῶν Σπουδῶν* 27 (1957): 89–109; and D. G. Tsames, “Ἰωσήφ Καλοθέτου Ἐπιστολαὶ καὶ Βίος ὀσίου Γρηγορίου,” *Ἐπιστημονικὴ Ἐπετηρὶς θεολογικῆς Σχολῆς Πανεπιστημίου Θεσσαλονικῆς* 19 (1974): 45–67. Arguments are presented for Blastares’s identification with the addressee of Akindynos’s 1345/46 letter and with the Matthew mentioned in that of 1347/48, in Constantinides-Hero, 391, 437. She also states regarding the letter addressed to the hieromonk (Constantinides-Hero, 391):

As first suggested by Meyendorff (Introduction, 124, n. 138; 137, n. 47), Matthew is to be identified with the jurist Matthew Blastaris whose works include two anti-palamite treatises.

J. Meyendorff supports the identification with Blastares, and holds that the hieromonk as well as the jurist Constantine Harmenopoulos opposed Palamas between 1341 and 1347. However, he ascribes two palamite treatises to Blastares, and does not mention any anti-hesychast works; see John Meyendorff, *Introduction à l’étude de Grégoire Palamas* (Paris: Éditions du Seuil, 1959), 124, n. 124; 137–38, n. 47; 404; 411; and 413–14.

conflict between Barlaam and Palamas.<sup>66</sup> If this is true and the *Alphabetical Collection* was not re-edited due to Blastares's change of convictions, this remark may be the only surviving evidence of the hieromonk's opposition to hesychasm. However, the word *πρόην* can also be translated as "long ago."<sup>67</sup> Consequently, Blastares may mean either a recent or an old heresy. "Those that wonder" could thus refer to such sects as the Paulicians or Bogomils, who were active in the Balkans as well as Asia Minor from the eighth century onward. In fact, a chief of the Bogomils was burned at the stake in about 1110 at Constantinople, and measures were taken against them in Serbia during the late twelfth century and in Bulgaria during the thirteenth century.<sup>68</sup> Consequently, the meaning of the text is unclear, although there are several interesting possibilities.

In this brief summary of his work, Blastares also contrasts civil and canon law.<sup>69</sup> He states that the aim of canon law precludes the use of corporal punishment as used in civil legislation. Such things are "unworthy of the mercy of God." Rather, the mercy of God requires that ecclesiastical law converts "the wandering," seeks out "the lost," and strengthens "the feeble." In short, canon law is understood as "a model of teaching," "spiritual medical treatment," and "the corresponding remedy" prepared "with the Holy Spirit" to deal with the disease of sin. Although civil legislation utilizes corporal punishment to curb violations and regulate society, ecclesiastical law makes use of spiritual means to achieve spiritual ends.

In summary, Blastares treats the canons as an extension of divine redemption. They are viewed as an incarnation of divine truth. The source of ecclesiastical law is considered divine, but the canons are to express divine truth in relation to particular historical circumstances and conditions. Canon law is viewed as a divine-human reality parallel to the two natures of the Savior. Within spiritual life, Blastares considers Church law to be a prescription for the diseases of the soul and a guide for the joining of the Church's members into one body or structure. The defeat of Satan is a major theme in Blastares's narrative concerning the development of canon law. This defeat is described as occurring through Christian martyrdom, the rulings of synods, and the writings of the Fathers.

The brief histories of Byzantine ecclesiastical and civil law are based on works by Photios, Theodore Balsamon, and John Zonar-

66. Constantinides-Hero, 208–209.

67. Liddell et al., 1543.

68. For general information concerning medieval dualism, see Steven Runciman, *The Medieval Manichee* (Cambridge: University Press, 1955).

69. Rhalles and Potles, 6:26–27.

as. These accounts reveal the legal sources utilized throughout the *Alphabetical Collection*. There also appears to be surviving evidence of the hieromonk's opposition to hesychasm. However, the text in question is unclear and can be interpreted in several possible ways.

Blastares considers his society to be a Christian commonwealth whose goal is the salvation of its members. Nevertheless, he clearly delineates the difference between civil and ecclesiastical law, especially concerning their respective means of enforcement.

### SEXUAL PURITY AND DEFILEMENT IN THE ALPHABETICAL COLLECTION

Within Christian society, the law is used to avoid spiritual impurity and regulate gender relations and sexuality. According to Blastares's legal usage, the term "defilement" (μολυσμὸς) characterizes the effect of personal impurity (ἀκαθαρσία) on an attempted relationship with the Divine or Sacred. Two types of defilement are distinguished. These are differentiated according to their source.

The first type results from the impurity caused by committing sin. For Blastares, sin takes place by one's assent (διὰ συγκαταθέσεως) to an evil desire (τὴν πονηρὰν ἐπιθυμίαν). The resulting transgression is considered a sin of intention (ἢ τε κατὰ διάνοιαν ἁμαρτία) that defiles the mind. The remedy for this type of defilement is the repentance of the sinner.

This type of defilement can be better understood if Blastares's treatment of masturbation is examined. At the outset, a distinction is made between a seminal emission and masturbation. Blastares states that a seminal emission is not regarded as impure by nature:

For if without any preexisting passion whatsoever, the emission of the organ has occurred spontaneously, nature expelling it as an excretion, let him who suffered it approach unhindered to the Divine Communion.<sup>70</sup>

The basis for this reasoning lies in the idea that "nothing created by God is by its nature impure (ἀκάθαρτον)."<sup>71</sup> The "passages" given to man for natural excretions are the means by which the "body discharges superfluity":<sup>72</sup>

Thus, the hairs of the head are emissions; also the liquids coming from the nostrils and mouth; the excrement

70. *Alphabetical Collection*, K. 28. Dionysios 4, Rhalles and Potles, 6:337.

71. *Alphabetical Collection*, K. 28. Athanasios, Rhalles and Potles, 6:338.

72. *Ibid.*

of the stomach; the sweat of the entire body; the semen of the seminal passages. These excretions and voidings benefit the animal, and that which is held back appears to corrupt it.<sup>73</sup>

However, when the seminal emission does not occur spontaneously but is induced by a nocturnal fantasy or through masturbation, assent to a passionate thought (ἐμπαθῆς λογισμός) has taken place.<sup>74</sup> In commenting on the *Short Rules* of St. Basil, Blastares states:

The saint called impurity (ἀκαθαρσίαν), not the seminal excretion, which no one, I believe, will absolutely avoid except perhaps if he were completely without feeling, but the evil desire (τὴν πονηρὰν ἐπιθυμίαν), concerning which the Lord said "He who looks at a woman," etc. [Matt 5:28] When it has dominion, the sin of intention (ἢ τε κατὰ διάνοιαν ἁμαρτία) is brought to completion through assent (διὰ συγκαταθέσεως τελεῖται) and both fantasy and the emission of semen take place afterwards during the night.<sup>75</sup>

Assent to evil desire (τὴν πονηρὰν ἐπιθυμίαν) is described as defiling the mind (ἐμόλυνε τὴν διάνοιαν).<sup>76</sup>

The prescribed cure is repentance from passionate thought (ἐμπαθῆς λογισμός). Repentance is brought about by the fulfillment of those penances stipulated by ecclesiastical law. As already stated, the canons are described as "medicines" (τὰ φάρμακα) and "prescriptions" (τὰ ἐπιτάγματα) used for the treatment of the spiritually "diseased" (τῶν νοσοῦντων).<sup>77</sup> Canon law is viewed as a prescription in determining penance for the correction of moral faults. For example, Blastares directs that canon eight of St. John the Faster be applied in the case of a priest who commits masturbation. Consequently, the priest is suspended for one year and excluded from Communion for forty days, during which time he is subject to xerophagy and performs forty-nine genuflections daily. Upon completing the year of penance, he is regarded as repentant and thus is permitted to resume his office and celebrate the Eucharist.<sup>78</sup>

73. Ibid.

74. *Alphabetical Collection*, K. 28, Dionysios 4, Rhalles and Potles, 6:337.

75. *Alphabetical Collection*, K. 28, Athanasios, Rhalles and Potles, 6:338.

76. *Alphabetical Collection*, K. 28, Dionysios 4, Rhalles and Potles, 6:338.

77. Rhalles and Potles, 6:4.

78. *Alphabetical Collection*, K. 28, Rhalles and Potles, 6:339; throughout Blastares's work, the fulfillment of penance (ἐπιτιμία) is regarded as a means of bringing about repentance (μετάνοια).



The second type of defilement results from contact with a person or object that is considered polluted and impure by nature, often regarded as such on the basis of Old Testament legislation. These prescriptions tend to concern women more often than men. Hence, whereas involuntary seminal emissions incur no defilement, menstruation is regarded as polluting on the basis of citations from Leviticus.<sup>79</sup> The impurity incurred through contact

79. In his definition of menstruation, Blastares states that the monthly flow of blood introduces impurity:

Women that are troubled by the monthly flow are said to be "in menstruation," because of their separation of themselves as impure (ἀκαθάρτους) from the seating of other women.

The practice of separate seating for such women suggests a reference to a similar custom recorded in Leviticus 15:19–24 (LXX), *Alphabetical Collection*, A. 16. Dionysios 2, Rhalles and Potles, 6:106 (In their own commentaries on Dionysios 2, Theodore Balsamon and John Zonaras explicitly make this reference, see Rhalles and Potles, 4:7–9). Although menstruation does not prevent women from praying privately, Blastares holds that it affects a woman's fitness to participate in public worship (*Alphabetical Collection*, A. 16. Dionysios 2, Rhalles and Potles, 6:106):

Certainly at the present time, such women are excluded not only from the altar, into which long ago it was permitted for them to enter, but also from the temple and the area in front of the temple.

In justifying the exclusion of menstruating women from public worship, Blastares states that the "woman with a flow of blood did not even dare to touch the Lord, short of the border of His outer-garments" (*Alphabetical Collection*, A. 16. Dionysios 2, Rhalles and Potles, 6:106). He also points out that the "Hebrew women, who experienced this, kept quiet sitting in their own place, until seven days passed and the monthly flow stopped" (*ibid.*), an apparent reference to Leviticus 15:25 (LXX).

Blastares's association of impurity with the menstrual flow is linked to his concept of blood and human birth. Man is said to provide the seed and woman the blood, which is next made into "formless flesh and then is fully shaped and formed into limbs and parts" (*Alphabetical Collection*, Γ. 28. Basil 2, Rhalles and Potles, 6:200). When the seed is not provided, the blood in the womb becomes superfluous and corrupt. The monthly flow is a means by which women "purify themselves" through the excretion of superfluity. The same type of purification is said to occur in the discharge of blood after birth (*Alphabetical Collection*, A. 16. Law, Rhalles and Potles, 6:106). However, unlike the flow of semen, Blastares holds that this involuntary flow causes impurity. With regard to such women partaking of the Eucharist, he states, "it is dangerous and precarious for one that is not entirely pure (τῷ μὴ πάντῃ καθάρῳ) to approach the Holy of Holies" (*ibid.*). Hence, he holds that the corruption of the blood, which does not involve assent to evil thought, produces impurity in the spiritual state of menstruating women. This contradicts his belief that the divinely created is not impure by nature. Blastares's association of this bodily excretion with impurity is strongly influenced by Judaic practices, especially revealed in the references to Leviticus. In addition to excluding women from public worship, Blastares also states that the "involuntary monthly flow" motivated the Fathers

with polluted persons or objects results in either permanent or temporary defilement despite the repentance or the original intention of the subject.

For example, Blastares states the following concerning an unfaithful wife and her husband:

Thus in the case of women, we find much strictness when the Apostle states, "He who is joined to a harlot is one body" [1 Cor 6:16], and Jeremiah that, "If she were with another man, she will not return to her husband but being polluted she will be polluted (μιαυνομένη μινθήσεται)" [Jer 3:1ff. (LXX)], (unless the husband would be clearly willing to receive her), and Solomon in Proverbs, "He who keeps an adulteress is foolish and ungodly" [Prov 18:22 (LXX)], i.e., he who has intercourse with a married woman, any woman who is shown to be an adulteress.<sup>80</sup>

The wife's act of sinning and its consequences occur in the following order: assent to passion, pollution, and impurity. This sin results in the same type of defilement as in the case of masturbation.

However, the husband that has relations with his adulterous spouse also incurs pollution.<sup>81</sup> On the basis of Old Testament prescriptions concerning adultery, the husband's intercourse with his wife, although not involving an assent to sin, is regarded as polluted because of her transgression and consequent impurity. The

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to abolish the ordination of deaconesses (*Alphabetical Collection*, Γ. 11. Concerning Women Deacons and Widows, Rhalles and Potles, 6:172). The theological foundation of this prohibition is based on the impure state of women experiencing a period, which makes them unfit to receive the Eucharist, enter a church, and hence participate in a ritual of ordination. However, the canonist assumes that even though women may participate in Holy Communion and public worship after their natural purification, the fact that such menstruation has taken place permanently bars them from ordination at any time. For the thought of the early Fathers on menstruation, purity, and women, see Aline Rouselle, *Porneia: On Desire and the Body in Antiquity* (Oxford: Basil Blackwell, 1988) and Peter Brown, *The Body and Society: Men, Women, and Sexual Renunciation in Early Christianity* (New York, Columbia University Press, 1988). Slavic views on sexuality are covered by Eve Levin, *Sex and Society in the World of the Orthodox Slavs, 900–1700* (Ithaca: Cornell University Press, 1989).

80. *Alphabetical Collection*, Γ. 16. Basil 9, 21, 35, 77, Rhalles and Potles, 6:186.

81. Blastares does not address the question of whether the wife incurs pollution from a husband that has engaged in an extramarital affair. In fact, the hieromonk states that according to canon nine of St. Basil, the wife is required to take back a fornicating or adulterous husband (*Alphabetical Collection*, Γ. 16. Again concerning laity who expel their own wives, Rhalles and Potles, 6:186): "the Church's practice commands that husbands who commit adultery or fornicate, be kept by their wives."

defilement of the husband results from an act that does not involve assent to evil thought, but rather an act that brings him into contact with someone regarded as polluted. For the second type of defilement, the following chain reaction occurs: contact with an impure object or person, pollution, impurity, and defilement.

When Blastares discusses legal marital sex life and the reception of the Eucharist and Holy Orders, the second type of defilement is applied.

For example, when married clergy prepare for the celebration of the Divine Mysteries, they are instructed to "abstain from sexual intercourse with their wives" so that "the pure approaching the Pure, who act in the capacity of mediators between God and man, might have their petitions granted."<sup>82</sup>

The avoidance of otherwise honorable intercourse with a legal spouse in preparation for the Divine Liturgy is termed "chastity" (σωφροσύνη).<sup>83</sup> Intercourse during this time is regarded as unchaste and impure. This impurity is linked to Old Testament ritual prohibitions:

For long ago it was commanded of the Jews who were about to hear the Divine utterances on the mountain not to go into a woman for three days.<sup>84</sup>

The implication is that clergymen should abstain from their wives for three days prior to celebrating the Eucharist. In the case of laity, the prohibition of relations before Communion is limited to the night before reception, especially "during Saturday and Sunday since at this time the Sacred Sacrifice is offered to the Lord."<sup>85</sup>

For clergy and laity, the question of assent to evil thought is not raised. Rather, the issue is posed in terms of whether or not a polluting act took place. The pollution rather than the intention makes the participant impure. Defilement results from the impurity. The defiled subject is disqualified from participating in the ritual of the Eucharist.

This type of defilement is also exemplified by the requirement for a married episcopal candidate to divorce. Although outside

82. *Alphabetical Collection*, Γ. 18. Carthage 3, 4, 25, and 73, Rhalles and Potles, 6:191.

83. For the position of σωφροσύνη in the thought of the early Fathers and especially the Cappadocians, see Helen North, *Sophrosyne: Self-Knowledge and Self-Restraint in Greek Literature* (Ithaca: Cornell University Press, 1966), 312–79.

84. *Alphabetical Collection*, Γ. 18. Carthage 3, 4, 25, and 73, Rhalles and Potles, 6:192; Exod 19:14ff. (LXX).

85. *Alphabetical Collection*, Γ. 18. Timothy 5 and 11, Rhalles and Potles, 6:192–93.

of preparation for the Eucharist marital relations are affirmed as chaste and acceptable for members of the lower clergy and laity, Blastares states that bishops are required “not only to abstain from sexual intercourse with other women but also with their own wives” and thus “govern their lives with strict chastity.”<sup>86</sup> The implication is that the intercourse of a married candidate with his wife is unchaste, results in defilement, and bars him from the episcopate. According to Blastares, the refusal of the wife to divorce an elected episcopal candidate impedes the ordination. Otherwise chaste marital intercourse is viewed as disqualifying one from participation in the sacred ritual of episcopal consecration.<sup>87</sup>

In all three instances, wedded clergy about to celebrate the Eucharist, married laity preparing for Communion, and candidates being consecrated bishops, there is an apparent conflict between the chasteness ascribed to marital relations (συνάφεια) based on Pauline teachings and the requirements for a ritual purity based on abstinence from sexual relations.<sup>88</sup> This points to a certain hierarchy in Blastares’s treatment of marriage and celibacy.

Whereas monastic life is identified with the renunciation of the world, the married state is portrayed as being bound to the world.<sup>89</sup> The term “world” is defined as “the sensual and material life.”<sup>90</sup> Husband and wife are described as living “in the world”

86. *Alphabetical Collection*, Γ. 17. Sixth Synod 12, Rhalles and Potles, 6:190; cf. Balsamon’s opinion that the wife’s refusal to divorce nullifies the election, Rhalles and Potles, 2:241.
87. For a survey of the Byzantine church’s canonical practice concerning married clergy, see Joseph J. Allen, ed., *Vested in Grace, Priesthood and Marriage in the Christian East*. (Brookline, MA: Holy Cross Orthodox Press, 2001); as well as relevant sections in Joëlle Beaucamp, *Le Statut de la Femme à Byzance* (Paris: De Boccard, 1990) and Angeliki E. Laiou, *Mariage, Amour et Parenté à Byzance aux XIe – XIIIe Siècles* (Paris: De Boccard, 1992).
88. For Blastares, the word συνάφεια means the physical union of husband and wife that takes place through sexual relations. Blastares describes marital relations as chaste and blessed (*Alphabetical Collection*, B. 9. Apostles 51, Rhalles and Potles, 6:141). Citations from St. Paul are used to reinforce this point, especially Hebrews 13:4 (*Alphabetical Collection*, B. 9. Gangra 1, 4, 14, 9, Rhalles and Potles, 6:142; Γ. 16. Apostles 5, Rhalles and Potles, 6:186). Relations between married couples are encouraged on the basis of 1 Corinthians 7:4–5, and the slandering of the sexual intercourse of husband and wife is penalized (*Alphabetical Collection*, B. 9. Apostles 51; Gangra 1, 4, 14, 9, 52, Rhalles and Potles, 6:141–42).
89. A similar idea is expressed in St. Gregory the Theologian’s Homily 37.10 (a work that Blastares cites in *Alphabetical Collection*, Γ. 4, Rhalles and Potles, 6:158), where the Cappadocian distinguishes wives from virgins by describing the former as bound to the world.
90. *Alphabetical Collection*, M. 15. First Second Synod, Rhalles and Potles, 6:382; again, a similar idea is expressed in St. Gregory the Theologian’s Homily 37.10, where the world is identified with matter and the flesh.

where chastity is difficult to bear.<sup>91</sup> Widows are characterized as tasting of the "world's pleasures" by having experienced their husband's bed.<sup>92</sup> Married men who live with wives and children are said to "live according to the world."<sup>93</sup>

Marital life in the world is not forbidden as long as it takes place with "thanksgiving to God" and not with lewdness.<sup>94</sup> Tolerance of married life is linked to the idea that all created things are good by nature but evil or good according to their use. Blastares emphasizes this point in a citation from canon fifty-one of the Holy Apostles:

Indeed nothing made by God is evil, but the abuse of these things [marriage, meat, and wine] is harmful. If these were causes of evil, they would not have been created by God. Therefore, he that slanders God's creation, defames the Creator.<sup>95</sup>

This line of reasoning allows for the good use of sexual union in matrimony.

Nevertheless, the relations of a husband and wife are placed on a lower spiritual level than the chasteness of the monk or nun. The spouse that seeks to end conjugal life by agreement and adopt the monastic habit or *schēma* is said to traverse "the road towards the better things" and choose "the better life."<sup>96</sup> The wife that takes on the habit "out of longing for the monastic life" is considered "blameless."<sup>97</sup>

The placement of married life on a lower spiritual level is evident in the way Blastares treats both conjugal relations and the re-

91. *Alphabetical Collection*, Γ. 2, Rhalles and Potles, 6:152: ". . . chastity was difficult to bear for those who live in the world and that perhaps this would cause both husbands and their wives to not be chaste."
92. *Alphabetical Collection*, Γ. 11. Concerning women deacons and widows, Rhalles and Potles, 6:171.
93. *Alphabetical Collection*, M. 15. Seventh Synod 22, Rhalles and Potles, 6:386.
94. Ibid.
95. *Alphabetical Collection*, B. 9. Apostles 51, Rhalles and Potles, 6:141.
96. *Alphabetical Collection*, Γ. 13. Unpenalized dissolution of marriage, and concerning a marriage that is dissolved on account of asceticism, Rhalles and Potles, 6:178.
97. *Alphabetical Collection*, B. 9. Gangra 1, 4, 14, 9, Rhalles and Potles, 6:142; in fact, this may take place without the husband's consent (*Alphabetical Collection*, M. 15. Gangra 15, Rhalles and Potles, 6:391):

Nevertheless, she that chooses the monastic life, even when her husband does not consent, shall be tonsured.

This represents one of the few instances where Blastares grants to a wife the right to disobey her husband. Although other instances of disobedience provide causes for divorce, in this case the wife is not required to submit to her spouse. This reflects the view that entrance into monastic life is placed above the obligations of a wife in marriage, and perhaps even matrimony in general.

marriage of the widowed. The husband's relations with his spouse are described as "the legal abatement of physical tyranny."<sup>98</sup> The implication is that the passions involved in "the natural need" are confined and regulated within a legal relationship with one woman. The intercourse of a married couple appears to be viewed as a remedy for fornication.<sup>99</sup>

The notion of marriage as the confinement of sexual energy underlies Blastares's justification of second and third unions as concessions to the flesh. He states in regard to second marriages:

However, the Divine Apostle Paul who perceived the instability of nature, permitted young widows, if they wished, to enter upon marriage again. The Divine Fathers who were not ignorant concerning the arising of the fleshly spirit did not deem it fitting to impede those men who choose to marry a second time. However, they did not allow them to have second marriages without criticism.<sup>100</sup>

98. *Alphabetical Collection*, Γ. 16. Basil 9, 21, 35, 77, Rhalles and Potles, 6:187.

99. Such an opinion is expressed by St. John Chrysostom, *On the Apostolic Saying*, "But on account of fornication let each man have his own wife" (PG 51:213):

At any rate, listen to Paul who states, "But on account of fornication let each man have his own wife and let each woman have her own husband" [1 Cor 7:2]. For there are two purposes on account of which marriage has been proposed: that we might be chaste and in order that we might become fathers. However, the motive of chastity is the principal one of these two. Inasmuch as lust (ἐπιθυμία) entered [the world], marriage also entered, which puts an end to immoderation and persuades [a man] to have intercourse with one woman. For marriage by no means brings about procreation, but that saying of the Lord which states, "Increase and multiply and fill the earth" [Gen 1:28 (LXX)] [causes this to occur]. And much bears witness [to the fact] that not all who had intercourse in marriage, become fathers. Therefore, this reason of chastity is the principal one, especially now, when all the world has been filled with our race. Certainly in the beginning the motive for children was desirable in order that each man might leave behind a remembrance and remnant of his own life. Indeed since there did not yet exist hopes of resurrection, but death held sway, and since they thought that those who died ceased to exist after life here, God gave [them] the comfort of children. . . . But since the resurrection already is at [our] doors, and not one word [is spoken] of death, but we travel towards another life better than the one existing, zeal concerning these matters is superfluous. . . . Therefore, there is one purpose for marriage, not to fornicate, and consequently this remedy has been proposed.

100. *Alphabetical Collection*, Γ. 4. Concerning Digamist Laity, Rhalles and Potles, 6:156.

The words of St. Basil are used to describe third marriages:

However, we no longer call such an affair marriage but polygamy, or rather fornication which has been tempered, i.e., not dissolved but reduced, limited to one woman. . . . However, we do not submit them to public condemnations since they are more preferable than unrestrained fornication.<sup>101</sup>

This view of marriage as a remedy for fornication results in the unequal treatment of single and married men who indulge in extramarital affairs. The canonical penalties for an unmarried fornicator are made less than for a married man because the former's unfulfilled natural need is thought to be deserving of more understanding and mercy.<sup>102</sup>

In contrast to these descriptions of passions and natural needs, monks are characterized as "heirs of blessedness" through their renunciation of the world.<sup>103</sup> This renunciation appears to be identified with the forsaking of family relations and the preservation of virginity.<sup>104</sup> The monk is characterized as married to the "Heavenly Bridegroom." In the manner of a spouse, Christ is described as having authority over the ascetic's body. The renunciation of monastic vows is consequently considered a form of adultery more serious than the extramarital affair of a married woman.<sup>105</sup>

In a conceptual framework where the monastic life is considered an unworldly virginal marriage with Christ himself, married laity and clergy who live "according to the world" by

101. *Alphabetical Collection*, Γ. 4. Basil 4, 50, Rhalles and Potles, 6:158.

102. *Alphabetical Collection*, Γ. 16. Basil 9, 21, 35, 77, Rhalles and Potles, 6:187.

103. *Alphabetical Collection*, M. 15. Concerning how those who wish to be tonsured must be accepted, Rhalles and Potles, 6:382.

104. *Alphabetical Collection*, B. 9. Gangra 1, 4, 14, 9, Rhalles and Potles, 6:142, where Gangra 9 condemns a wife for entering monasticism "on account of abominating marriage, and not because of the beauty and holiness of virginity." The clear implication is that the latter reason, the preservation of virginity, would be a proper motivation to sunder a marital union. As noted in the previous canon (Gangra 52), a wife is permitted with no penalty to divorce the husband without his consent if departing "out of a longing for the monastic life"; cf. *Alphabetical Collection*, M. 15. Gangra 15, Rhalles and Potles, 6:391.

105. *Alphabetical Collection*, M. 15. Concerning monks and nuns who lapse, Basil 6, 18, Rhalles and Potles, 6:392:

But if one who has been joined to the Heavenly Bridegroom, divorces Him, and joins himself to a woman, this affair is adultery, even if you call it marriage ten thousand times. But rather this is even worse than adultery, by how much God is greater than man. For if the wife has no authority over her own body, but the husband does; by how much more they who live in Christ must not be themselves masters of their own bodies.

their passionate involvement occupy a lower spiritual position in terms of chastity and holiness.

The result is a spiritual hierarchy determined by sexual abstinence. The monk is considered fully dedicated to God by his marriage to Christ. The married clergyman is viewed as pure and consequently fit for Divine services only when refraining from marital intercourse. The laity are assumed to be focused on "worldly matters" by their family relations and indulgence in the passions in marriage.<sup>106</sup> Within this framework, bishops are chosen from those who exhibit the strictest chastity and purity: celibate monks who thus occupy the highest spiritual and ecclesiastical ranks.

In summary, according to Matthew Blastares, there are two types of defilement. The first is voluntary, the second involuntary. In the case of the first, pollution results from assent to an evil thought, but for the second, from contact with a person or object thought to be defiled, often on the basis of prescriptions from the Levitical law. The second type is applied most often in cases involving the relationship of marital sexuality to the sacred, particularly the Eucharist and Holy Orders.

In both instances, the chastity required of the participants is identified with the notion of purity, which in turn is defined by the absence of sexual activity. Consequently, there exists a spiritual hierarchy determined by sexual abstinence, according to which the married laity and clergy occupy the lower positions in terms of chastity and holiness. This also results in an unresolved inconsistency between the honor Blastares ascribes to marital sexuality on the basis of St. Paul and its less-than-honorable treatment in the requirements for consecrating and receiving Holy Communion. Ultimately, it also raises the question of whether the Eucharist is a sacred object that demands ritual purity; a divine presence that bestows mercy, forgiveness, and holiness; or both.

## FORMATION OF MARRIAGE

Although marriage when compared to celibacy appears to be treated as a less spiritual alternative, the *Alphabetical Collection* contains extensive legislation regarding the formation of marriage. In modern Orthodox theology, a school of thought led by the theologian John Meyendorff proposes that the Eucharist occupied a large role

106. This hierarchy even extends to motivations for sin. For example, in Blastares's treatment of the desertion of wives, the clergy are ascribed the pretext of piety as a motivation, while the laity commit the same actions as a result of adultery (*Alphabetical Collection*, Γ. 16, Rhalles and Potles, 6:185–89).



in the Church's canon law as a constitutive element in the establishment of marriage.<sup>107</sup> This raises the question of the relationship between the Eucharist and the formation of marriage within the legal framework of the *Alphabetical Collection*. Blastares states that matrimony is established "through a blessing, or crowning, or contract" (εἴτε δι' εὐλογίας, εἴτε διὰ στεφανώματος, ἢ διὰ συμβολαίου).<sup>108</sup>

The word "blessing" (εὐλογία) refers to betrothal. Formal betrothal was distinguished from engagement. The minimum age requirements for betrothals were "past the twelfth year for a female and with the completion of the fourteenth year for a male," the same as for marriage.<sup>109</sup> Engagements were permitted between parties seven years old or younger.<sup>110</sup> Previous betrothal affected candidacy for ordination in the same way as matrimony.<sup>111</sup> This occurred in the case of engagement only if the candidate had contracted with a woman who was more than six years old.<sup>112</sup> The dissolution of formal betrothal was regarded as an ecclesiastical divorce and was based on stipulated grounds.<sup>113</sup> Engagements are said to "operate according to the usage of other contracts." The

107. John Meyendorff, *Marriage: An Orthodox Perspective* (Crestwood, NY: St. Vladimir's Seminary Press, 1984, 3rd rev. ed.).

108. *Alphabetical Collection*, Γ. 2. Definition of Marriage, Rhalles and Potles, 6:153–54; the source of Blastares's statement is the ninth-century *Epanagoge* 16.1, I. Zepos and P. Zepos, eds., *Jus Graecoromanum* (6 vols.; Darstaldt: Scientia Aalen, 1962), 2:274:

Γάμος ἐστὶν ἀνδρὸς καὶ γυναικὸς συνάφεια καὶ  
συγκλήρωσις πάσης τῆς ζωῆς εἴτε δι' εὐλογίας εἴτε διὰ  
στεφανώματος ἢ διὰ συμβολαίου.

The meaning of this definition in its earlier historical context will be the subject of a separate forthcoming study.

109. *Alphabetical Collection*, Γ. 15, Rhalles and Potles, 6:181.

110. *Ibid.*

111. *Alphabetical Collection*, Γ. 15, Rhalles and Potles, 6:182.

112. *Ibid.*

113. According to Blastares, "betrothal is dissolved, just as also marriages, on account of these worthy causes" (*Alphabetical Collection*, Γ. 15, Rhalles and Potles, 6:183). However, the causes were not the same nor were they categorized in a similar fashion. The main emphasis of grounds allowed by Blastares for the dissolution of marriage concerned the disruption of marital union (*Alphabetical Collection*, Γ. 13, Rhalles and Potles, 6:176–77). The majority of the causes dealt with adultery or situations that concerned actual or suspected sexual immorality. The causes for dissolving betrothals had a different focus: finances, character, position in life, and events surrounding the contracting (*Alphabetical Collection*, Γ. 15, Rhalles and Potles, 6:181). The difference indicates that whereas divorce in the case of complete marriage was concerned with a loss of union, the sundering of betrothal dealt with the loss of a foundation for the completion of marriage. In this way, the character of betrothal is revealed to be a step in the completion of matrimony, nearly equivalent to marriage as its foundation, but not the same as the completed union.

breaking of such agreements entailed "the penalty of a fine" and the loss of earnest money paid to guarantee the contract, but was not regarded as equivalent to divorce.<sup>114</sup>

In terms of their formation, engagements were "confirmed agreements" contracted "through mere speech."<sup>115</sup> The same element of contract existed in the case of formal betrothal since consent and gifts were exchanged between the prospective spouses and their families.<sup>116</sup> However, the key element that differentiated the formation of formal betrothal from engagement was the fact that it was established through benediction. According to the legislation of Byzantine Emperor Alexios I Komnenos (1081–1118) cited by Blastares, formal betrothal was brought about or celebrated through sacred "blessing" (εὐλογία) in a rite whose central feature was prayer:

From the novel which was later pronounced by the pious Emperor Alexios Komnenos in the year 6592, betrothal is nearly equivalent to complete marriage, inasmuch as it is celebrated with sacred prayer (ἄτε μετὰ ἱερᾶς καὶ αὐτῆ τελουμένη εὐχῆς). . . . True betrothals are ratified by us, as long as they are known to be celebrated (τελεσθεῖσαι) at the age prescribed by us and with a sacred blessing (μετὰ τῆς ἱερᾶς εὐλογίας). . . . Since betrothals are not confirmed by contracts, but through the invocation of God (διὰ τῆς τοῦ θεοῦ ἐπικλήσεως), they also remain perpetually indissoluble, being dissolved only for the same causes as marriages.<sup>117</sup>

The prayer's main purpose was the invocation of God, an epiclesis, in order that the betrothal might be confirmed and made indissoluble. By this divine blessing, betrothal was made equivalent to marriage:

114. *Alphabetical Collection*, Γ. 15, Rhalles and Potles, 6:181.

115. *Alphabetical Collection*, Γ. 15, Rhalles and Potles, 6:180.

116. The parents and the future spouses consented to the betrothal. Parents were permitted to arrange betrothals for their dependent children. Female children were permitted to object only if the union was "unworthy and shameful." If a male disagreed, "a betrothal does not occur in his name." The dependents were not allowed to betroth themselves contrary to the wishes of their parents. When the parents disagreed, the father's will prevailed (*Alphabetical Collection*, Γ. 15, Rhalles and Potles, 6:183–185; *Basilika* 28. 1, 5, 9, 10, 11, Scheltema, A4:1315–17).

117. *Alphabetical Collection*, Γ. 15, Rhalles and Potles, 6:180–81.

For it is not coition (συνάφεια), but the rite of prayer (ἡ τῆς εὐχῆς τελετή), that causes the betrothal to be reckoned as a marriage.<sup>118</sup>

The resulting effects were negative in character, that is, they tended to involve obligations rather than rights. The betrothed were required to be faithful and yet were not allowed to enjoy sexual union. In this sense, betrothal was not a complete marriage involving positive rights, e.g., the husband to the body of the wife and vice versa.<sup>119</sup>

The word "crowning" (στεφάνωμα) refers to the central rite involved in the ceremony of marriage.<sup>120</sup> The character of this rite is revealed in Blastares's statement that betrothal is equivalent to complete marriage (one celebrated with crowning) because it is established through "sacred prayer" (ἱερᾶς εὐχῆς).<sup>121</sup> The implication is that the imposition of crowns involved sacred prayer or blessing as well. Because betrothal was formed through a prayer of invocation (ἐπικλήσεως), the crowning most likely also involved a form of epiclesis, but one that completed marriage. The betrothal prayer and crowning were steps toward the full establishment of a union. Both the crowning and the betrothal blessing were categorized by Balsamon as forms of benediction (ἱερολογία).<sup>122</sup> This usage was accepted by Blastares, who relied heavily on the commentaries of the earlier canonist.<sup>123</sup>

Several possible explanations may be suggested for the use of "contracts" (συμβόλαια) in the formation of marriage. Because Blastares states that marriage and betrothal are established through blessing, it can be argued that the provision of "contracts" applied

118. *Alphabetical Collection*, Γ. 15, Rhalles and Potles, 6:182.

119. Although described as nearly equivalent to marriage, and thus also establishing kinships of affinity, it was not regarded as a complete union nor as a substitute for the marital bond. This is emphasized by Blastares's prohibition of marriage if a future bridegroom has sexual relations with his prospective mother-in-law since "it is not permissible for incest to be knowingly permitted," (*Alphabetical Collection*, Γ. 15, Rhalles and Potles, 6:182–83).

120. The use of crowning in the marriage ritual of Blastares's period is documented by the manuscript texts cited and quoted at length in P. N. Trempelas, *Μικρὸν Εὐχολόγιον* (Athens: 1950), 1:22–25.

121. *Alphabetical Collection*, Γ. 15, Rhalles and Potles, 6:180.

122. Rhalles and Potles, 4:182:

For accordingly, since marriages and betrothals take place with a benediction (μετὰ ἱερολογίας) . . .

123. *Alphabetical Collection*, Γ. 8, Rhalles and Potles, 6:164; cf. Rhalles and Potles, 4:183. For the reliance of Blastares on Balsamon throughout the *Alphabetical Collection*, see S. Troianos, "Περὶ τὰς νομικὰς πηγὰς τοῦ Ματθαίου Βλάσταρη," *Ἐπετηρὶς Ἐταιρείας Βυζαντινῶν Σπουδῶν* 44 (1979–1980): 305–29.

to the marriages of heretics, pagans, Jews, or Muslims, who were not able to form unions through the Church. However, the only mention of such people in the *Alphabetical Collection* occurs insofar as they relate to Orthodox Christians, e.g., the prohibition of marriage with Jews, heretics, or pagans.<sup>124</sup> For the most part, the canonist's work consists of ecclesiastical legislation applicable only to the Orthodox subjects of the Empire. By extension, the definition of marriage as part of this legislation would not have been intended by the canonist to pertain to the non-Orthodox. The application of the word "contract" to such marriages should thus be discounted.<sup>125</sup>

A second possibility is that contracts were employed in cases where marriages and betrothals could not be formed by Orthodox Christians through the Church's benediction. This raises the issue of whether second and third marriages took place with an ecclesiastical rite.

According to Niketas of Heracleia's (1030–1100) canonical responses, a work that Blastares summarized and which forms an appendix to almost all copies of the *Alphabetical Collection*, two varying practices occurred in the case of second marriage.<sup>126</sup> The

124. *Alphabetical Collection*, Γ. 12, Rhalles and Potles, 6:173–75. Blastares records the provision of *Basilika* 1.1.38 that prohibits Jewish/Christian marriage, but he does not include *Basilika* 1.1.39, which prohibits Jews from following their supposed marriage laws that are said to allow polygamy. This omission may reflect conditions in the empire during Blastares's time in which Jews, at least with respect to marriage, may have been governed by their own religious laws and not the type of legislation as set forth in the *Alphabetical Collection*. For an overview concerning Byzantine Jews during the thirteenth and fourteenth centuries, see Steven B. Bowman, *The Jews of Byzantium 1204–1453* (University, AL: University of Alabama Press, 1985).

125. This is not to say that marriages amongst these peoples did not take place by contract. For example, marital contracts certainly occurred in the case of Jews. However, my contention is that matrimonial legislation and the definition of marriage in the *Alphabetical Collection* were not directed toward the non-Orthodox.

126. For a general discussion of the canonical responses, see P. B. Paschos, 'Ο Ματθαῖος Βλάσταρης καὶ τὸ Ὑμνογραφικὸν Ἔργον Του (Thessaloniki: Idryma Meleton Chersonesou tou Aimou, 1978), 113. An edition of these summaries together with Niketas's original answers occurs in A. Pavlov, "Kanonicheskiye otvety Nikity mitropolita Irakliyskago (XI–XII veka) v ikh pervonachal'nom vide i v pozdneyshey pererabotke Matfeya Vlastarya (XIV v.)," *Vizantiyskiy Vremennik* 2 (1895): 160–76, where Blastares's version of the first canon appears as follows (Pavlov, 167):

Strictness does not have the custom of crowning digamists. However, the practice of the Great Church does not observe such things, but also grants marital crowns to digamists, and no one was ever censured in consequence of this. Except that they are excluded one or even a second year from the Divine Communion. It has not been approved according

first was the usage of the Great Church, according to which both parties were crowned. The second was the practice in force outside of Constantinople, where no crowning was said to take place.

Balsamon records that both the benediction and communion of the couple occurred during the first marriage ceremony.<sup>127</sup> If the practice of communing the couple continued in Blastares's period, as manuscript evidence suggests, the fact that both parties to digamy were under penance suggests that the administration of the Eucharist did not occur in second union rites.<sup>128</sup> Outside of Constantinople, if crowning did not take place and communion was not administered, the case could be made that contracts were used to establish marriage. However, during Blastares's period, the existence of a prayer for digamy and the practice of administering blessed wine (the "common cup") without Holy Communion imply that these forms of benediction and not contracts served to replace the crowning.<sup>129</sup> Within Constantinople, the use of crowning for digamy, the same form of blessing used in first unions, disqualifies the notion that contracts were used there to replace such rites in instances of second marriage.

The possibility can likewise be raised as to whether contracts were used for third marriages. In this regard, a document survives from the patriarchate of Matthew I (1397–1410) that lists marriages administered by the diocese of Constantinople for each

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to the eighth canon of the synod in Neocaesarea for the presbyter who blessed these (τὸν ἱερολογήσαντα τούτους πρεσβύτερον) to share a meal with them.

127. Rhalles and Potles, 4:160:

However, these things were applicable, as it seems to me, when marriage was established only by consent, not at present, when marriage is established by a benediction and divine partaking of the Body and Blood of Christ (δι' ἱερολογίας καὶ Θείας μεταλήψεως τοῦ σώματος καὶ αἵματος τοῦ Χριστοῦ).

128. Manuscript evidence for Communion during the first marriage rites is summarized by Trempelas, 12–13. *National Library of Athens suppl.* 724 (fourteenth-fifteenth century) is presented as an example of this usage in Trempelas, 64–67; a number of texts illustrating this point are also reproduced in Alexis Demetievski, *Opisaniye liturgicheskikh" rukopisey* (3 vols.; Kiev: I. T. Korchak"-Novitskago, 1901), including *Sinai 981* (fourteenth century) and *Athanasios Lavra 7* (fourteenth century), respectively, Demetievski, 2:341, 366.

129. According to a manuscript dating from the fourteenth-fifteenth century (*National Library of Athens suppl.* 724), the usage for the first marriage was to administer Communion prior to the common cup, Trempelas, 64–66. The manuscripts cited above in Demetievski also illustrate this point. St. Symeon of Thessaloniki (d. 1429) interprets the elimination of Communion and the retention of the common cup in the rite of the second nuptials, as a "partial blessing" (μερικὸν ἀγιασμόν) of the marriage (PG 155:513).

day of August 1399.<sup>130</sup> After each date, the name of the officiating clergyman appears along with the notation that permission was received “in order that he might bless” (ἵνα εὐλογήσῃ) the union. Next to the spouses’ names, the number of their previous marriages is recorded. Second and third marriages are listed as blessed and are not distinguished from one another or from first unions except by recorded number.

The description of the priest or bishop as blessing third marriages implies that prayer of some type was employed to establish trigamy rather than the signing of contracts.<sup>131</sup> The fact that the patriarchal record is dated later than Blastares is its main weakness as evidence for practices of his period. Nevertheless, it is likely that if a special form particular to second or third marriages was used that involved legally binding and indissoluble contracts, this would be discussed either in the *Alphabetical Collection* or one of its appendices. Moreover, if such a practice existed, it would survive in at least one manuscript and be reflected in documents of the Great Church within sixty years of Blastares’s writing. The absence of such evidence makes the use of contracts in place of a marital benediction very doubtful.

130. Franz Miklosich and Joseph Müller, *Acta Patriarchatus Constantinopolitani MCCCXV–MCCCCII* (vol. 2 of *Acta et Diplomata Graeca Medii Aevi Sacra et Profana*; Vienna: Carolus Gerold, 1862), 297–99.

131. On the basis of this evidence, J. Zhishman holds that third marriages were also crowned in Constantinople; see J. Zhishman, *Das Eherecht Der Orientalischen Kirche* (Wien: Wilhelm Braumüller, 1864), 447. However, M. Apostolopoulos disagrees by stating that the list does not imply anything concerning crowning; see M. Apostolopoulos–J. Zhishman, *Τὸ δίκαιον τοῦ γάμου τῆς ἀνατολικῆς ὀρθοδόξου ἐκκλησίας* (2 vols.; Athens: Athens Dawn, 1912), 2:136, n. 1. In any case, this benediction did not include the reception of Communion because the parties to trigamy were under penance; see *Alphabetical Collection*, Γ. 4, Rhalles and Potles, 6:158. Blastares does not state in the *Alphabetical Collection* that the couple received crowns. One version of the canonist’s summary of Niketas’s first canonical response records that trigamists were crowned according to the usage of Constantinople. However, this appears in later editions of the *Great Euchologion*, e.g., *Εὐχολόγιον τὸ Μέγα* (Venice: Phoenix Press, 1862), 253, and not in earlier printings, e.g., Jacobus Goar, *Euchologion sive rituale graecorum* (Venice: Bartholomew Javarina, 1730), 327. This later version of Niketas’s first response was a modern interpolation made to justify leniency toward third marriages. It is thus likely that during Blastares’s time, trigamists received a benediction through a sacerdotal prayer. Nevertheless, the fact that with only one exception, no such prayer survives in the manuscripts may suggest that a special prayer for trigamy did not exist during Blastares’s period, and that perhaps the rite for digamy listed in many texts performed a double-service, also being used in the case of third unions. Such a usage is recorded in a sixteenth-century manuscript (*Lavra Monastery 21*); see Trempelas, 79. The manuscript that contains a prayer for trigamy is *Sinai 717* (dated 1510); see Demetievski, 2:717.

Nevertheless the fact that throughout the *Alphabetical Collection* blessed marriages are referred to as contracts suggests that contracts were used at some point in the formation of unions that were later completed through blessing and crowning.<sup>132</sup> The word *συμβόλαιον* occurs in Blastares's summary of the emperor Alexios's legislation on betrothal:

Indeed properly speaking, betrothal will not be dissolved by payment of fines, nor will they henceforth be expressed in writing through contracts (*συμβολαίους*). Since betrothals are not confirmed by them, but through the invocation of God, they also remain perpetually indissoluble, being dissolved only for the same causes as marriage, . . . engagements (*συμβόλαια*) that are in the form of a betrothal . . . do not at all hold the position of a legal and confirmed betrothal, but are viewed only as confirmed agreements (*ἐπερωτήσεις μόνον ἠσφαλισμένας*) and operate according to the usage of other contracts (*συναλλαγμάτων*).<sup>133</sup>

The word *συμβόλαιον* here denotes a contract in general and at the same time a simple engagement, i.e., a contract that appeared in the form of a betrothal but was distinguished from it by being dissolvable and thus not holding the status of a complete marriage.

On this basis, a case might be made that the *συμβόλαια* discussed in the definition of marriage were in fact the simple engagements mentioned in Alexios's novels. However, as we have already seen, these engagements did not entail the legal consequences of formal betrothal and might be repudiated. This suggests that such agreements did not establish a condition equivalent to marriage,

132. The words used to describe the contracting of marriage include *συναλλάττειν*, *συνάλλαγμα*, and *συμβόλαια* (*Alphabetical Collection*, B. 8, 12, Rhalles and Potles, 6:128, 129, 132, 174).

133. *Alphabetical Collection*, Γ. 15, Rhalles and Potles, 6:181; Blastares also uses the word *συνάλλαγμα* to denote the simple engagement allowed between non-Orthodox and Orthodox, when the former promised to convert (*Alphabetical Collection*, Γ. 12, Rhalles and Potles, 6:173):

The council states that if perhaps the heretic or the unbeliever promises to observe the Orthodox faith, let the contract (*συνάλλαγμα*) proceed. However, let the union (*συνάφεια*) be delayed, until the substance of his promise would be confirmed by works. Latins who choose to marry Orthodox women are also required to do these things.

If formal betrothal and crowning are represented by the word *συνάφεια*, then it is consistent that because these involved blessing and benediction, non-Orthodox would be barred from these steps (which are regarded as equivalent to a complete union) until finally converting.

according to which, dissolution by consent was strictly forbidden. Simple engagement did not thus form a matrimonial union and could not fulfill the definition of marriage.

A last possibility is suggested by a passage from the liturgical commentaries of St. Symeon of Thessaloniki (d. 1429):

Next on the appointed day, in order that the contract (συμβόλαια) is written, an assembly of honorable men gathers for the sake of the witnessing what takes place, and because an agreement (συνάλλαγμα) of legal marriage is put into effect. Wherefore, a man is also legally designated, and he writes the contract (συμβόλαια). The signatures of the contracting parties (συναλλαττόντων) are made by means of a cross, showing that the act is from God and begins in Christ. When the fathers of the future spouses touch the reed-pen, they indicate by this their own willingness and free consent. Wherefore they also bow down first to Him and then touch the reed-pen. In consequence of the fact that Christ binds them, the contracts are called cross bonds (σταυρικοί λέγονται δεσμοί). And they are not permitted to be dissolved without certain legal consequences occurring such as in the case of a complete marriage. Therefore, their dissolution will be a crime. At the appointed time of marriages, both the bridegroom and bride arrive at the Church.<sup>134</sup>

The main problem in the use of this commentary is the fact that it was written in the century following Blastares's work and may not refer to practices current during the canonist's period. If this objection is laid aside, the commentary provides the most likely explanation for the word "contract" in the canonist's definition of marriage. St. Symeon states that prior to the church rite of betrothal and crowning, the couple signed in the presence of their parents a written contract, the σταυρικοί δεσμοί (cross bonds), known as such because it was signed with a cross. The agreement signified the consent of the couple to the union and most likely involved the transfer of property into the future marital community, e.g., the dowry and antenuptial gift. The parents manifested their consent by touching the quills used by the future spouses. After the agreement was presented to a legally designated man, i.e., a representative of the state, the couple then proceeded to the church for the religious rites. The contract signing thus appears to be a purely civil form of marital union.

134. PG 155: 505–508.



This interpretation is supported by the fact that the definition of marriage occurs in a section of the *Alphabetical Collection* devoted to civil legislation, as does the following statement:

The husband and wife having intercourse with one another does not form the marriage, but their consent for marriage does.<sup>135</sup>

At first glance, this contradicts the other statements made by Blastares that marriage and betrothal were established through the Church's benediction and not through consent.<sup>136</sup> However, if this statement is regarded as civil legislation and not ecclesiastical, the inconsistency is reconciled.

The notion that marriage is formed by contract, i.e., by agreement or consent, was one taken from civil law.<sup>137</sup> The presence of a legally designated individual and the absence of a sacerdotal blessing indicate that the cross bonds, despite their religious tone, represented purely civil arrangements. These agreements most likely concerned the legal registration of the union in addition to the property arrangements discussed above. Such registration was probably necessary for the confirmation of legitimate offspring, especially with regard to inheritance questions. The state may have recognized these contractual agreements as establishing a community of persons and goods, by strict definition a legal civil union. This civil recognition possibly underlies Symeon's statement that the dissolution of the contract was regarded as entailing the same consequences as in the case of completed marriage (τετελεσμένῳ τῷ γάμῳ), and thus was viewed as a crime (παρανομία).

In sections dealing with ecclesiastical laws, Blastares states that the betrothal blessing and marital benediction established marriage. He emphasizes that consent to marry did not form a marital union. On this basis, the canonist would not have recognized the "cross bonds" as a marriage. Blastares's silence in describing the details of such arrangements might be explained by the fact that the civil law in this case did not coincide with the ecclesiastical

135. *Alphabetical Collection*, Γ. 2, Rhalles and Potles, 6:154; cf. *Digest* 50.17, Theodor Mommsen and Paul Krueger, eds., *The Digest of Justinian* (trans. Alan Watson; 4 vols.; Philadelphia: University of Pennsylvania Press, 1985), 4: 958:

Ulpianus libro trigensimo sexto ad Sabinum. Nuptias non concubitus, sed consensus facit.

136. *Alphabetical Collection*, Γ. 8, Rhalles and Potles, 6:164:

However, at that time, the marriage was established by consent alone. It would not constitute a marriage for us without a benediction (ιερολογία).

137. *Digest* 50.17.30.

view of marriage and could not be used to confirm the canons.<sup>138</sup> On the other hand, the canonist may have viewed such expressions of mutual agreement as fulfilling the Church's requirement for free consent, which was considered necessary for the reception of the betrothal blessing and crowning. Along with this, their probable use by the state may explain whatever mention is made of "contracts" in the *Alphabetical Collection*.

The statement made in the civil law section that marriage was formed by consent is thus not a historical note but rather one that was utilized by the state in the recognition of a marital community. The use of blessing and crowning are presented as additional ways of creating legal unions recognized by the state. The Church would not accept these contracts as equivalent to marriage but would bestow such status only to betrothal and crowning. The definition of matrimony used by Blastares thus indicates that a complete union in the eyes of Church and state, which involved obligations, rights, property relations, and registration, was formed through a process. The stages of the process were the following: contract, betrothal blessing and crowning in the case of the first union, and appropriate liturgical substitutions in cases of second and third marriages.<sup>139</sup>

Nevertheless, Balsamon states that marriage took place through benediction and partaking of Holy Communion.<sup>140</sup> St. Symeon of Thessaloniki, almost a century after Blastares, records that in the celebration of a first marriage, the couple received both

138. As already noted in the preface of the *Alphabetical Collection*, he states that only laws that are consistent with the canons will be included in his work (*Alphabetical Collection*, preface, Rhalles and Potles, 6:5):

Next I have considered it worthwhile to also join to related chapters of the canons both brief and abridged ones of civil legislation that aid and agree with the sacred canons, and witness superabundantly to their soundness.

139. Gabriel Le Bras reaches a similar conclusion in Jean Dauvillier and Carlos de Clercq, *Le Mariage en Droit Canonique Oriental* (Paris: Recueil Sirey, 1936), vii:

Jamais, à vrai dire, l'unité parfaite de la célébration n'a été réalisée: rien de plus instructifs du mariage; l'idée d'une formation instantanée, au déclic des paroles, fut presque toujours étrangère aux Orientaux, pour qui la foundation d'un ménage s'accomplit par opérations successives.

This opinion is also shared by De Clercq and Dauvillier, 35, and Korbinian Ritzer, *Formen, Riten und religiöses Brauchtum der Eheschließung in den christlichen Kirchen des ersten Jahrtausends* (Münster: Aschendorff, 1981), 119–20.

140. Rhalles and Potles, 4:160.

the Eucharist and the common cup.<sup>141</sup> Manuscripts dating from the fourteenth century contain an identical liturgical usage.<sup>142</sup>

However, Blastares does not make any explicit statement that marriage was formed through the reception of the consecrated elements. In his discussion of Timothy of Alexandria's eleventh canon, he states that a priest who was invited to a wedding for blessing and oblation must not attend if the union was unlawful.<sup>143</sup> This implies that Blastares recognized a marriage celebration that included the reception of the Eucharist. Nevertheless, in the same discussion, the author states:

Clerics must not marry with a benediction the ones that choose to wed in this fashion, lest by doing so, they will participate in the sins belonging to others.<sup>144</sup>

The partaking of Communion is not mentioned here or in any part of the *Alphabetical Collection* as an element resulting in the formation of marriage. Blastares emphasized that benediction was the essential factor for the establishment of the nuptial union. As has been seen, the main elements identified with this benediction are prayer (εὐλογία) and crowning (στεφάνωμα).

The relationship between Communion and the nuptial rite may be better understood if the issue of excommunication is examined. In the *Alphabetical Collection*, there are two types of exclusion from the Eucharist. The first resulted from the impurity of the communicant. This type of excommunication was temporary in nature and was remedied through repentance. Repentance consisted of a turning away from evil and, as discussed earlier, the fulfillment of penance. The second type of exclusion was permanent and resulted in eternal expulsion from the Church. This expulsion was known as anathematization, which was defined as complete separation from Christ and consignment in turn to Satan.<sup>145</sup>

The first type of excommunication was involved in the penance of second and third marriages, both of which resulted in temporary Eucharistic debarment. According to the late manuscript evidence already cited, the spouses were not communicated during the rite used for third marriage. Moreover, they were excommunicated for a certain length of time, after which the couple was permitted to receive Communion three times each year. These occasions occurred on the Nativity, the Dormition, and Pascha, when the stain that

141. PG 155:512–13.

142. Trempeles, 63–66; Demetrievski, 2:341, 366.

143. *Alphabetical Collection*, Γ. 9, Rhalles and Potles, 6:168.

144. *Ibid.*

145. *Alphabetical Collection*, preface, Rhalles and Potles, 6:16–17.

they were considered to have incurred was thought to be absorbed by Lenten fasts. According to Balsamon, abstinence during these fasts included not only certain foods but also marital relations.<sup>146</sup> The marital relations of trigamists were considered by Blastares to be defiling, i.e., causing a state of impurity that barred the spouses from receiving the Eucharist. If the canonist agreed with Balsamon that the fast included abstinence from marital sex, the spouses' reception of Communion on these feast days served as a sign that by refraining from such relations they had been cleansed of defilement. Participation in the Eucharist would be a sign of purity.

On the other hand, the communion of the first-married during the nuptial rite itself, as the manuscripts and Blastares's allusions suggest, can be interpreted as meaning that such couples were considered pure in the eyes of the Church and that their union took place in an undefiling manner. In this sense, their participation in the Eucharist sealed the union by manifesting the worthiness of the spouses as well as the uncondemned nature of the marriage. Such participation can be taken as a sign that wedlock had been blessed and perfected through redemption by Christ, a point emphasized in Blastares's references to the wedding at Cana and the undefiled nature of the marriage bed.

This makes clear the meaning of St. Symeon's interpretation of the common cup in the second nuptials as a sign of "partial blessing" (μερικὸν ἁγιασμόν).<sup>147</sup> Because digamists were under penance, they were not communicated during the nuptial rite.<sup>148</sup> However, Blastares states that after several years' temporary excommunication, they were once more allowed to fully participate. The eventual communion of digamous spouses implies that gradually through penance they were considered worthy of the Eucharist and that their union was accordingly placed on the same level as the first-married. The reception by digamists of the common cup was thus a sign of partial blessing on their union and whose eventual acceptance as being fully worthy was granted as a possibility and achieved through penance.

In general, the Eucharist was viewed by Blastares as fulfilling a symbolic role in the nuptial rite with regard to the worthiness of both the couple and marriage itself. By confirming these realities, Holy Communion sealed and perfected the marital union. How-

146. Rhalles and Potles, 4:485–86.

147. PG 155:513.

148. Later manuscripts record that they were not communed: *Lavra Monastery* 21 (sixteenth century), *Trempelas*, 78–79; *Athanasios Lavra* 60 (dated 1578), *Demetievski*, 2:801.

ever, Eucharistic participation was not a necessary element in the establishment of matrimony.

Prayers of invocation or epiclesis were the key elements in the "blessing" rites of betrothal and "crowning." The benediction of the marital union is described as given by the priest. The nature of blessing (εὐλογία) was defined as the imparting of "spiritual and sanctifying grace."<sup>149</sup> The priest acted as a mediator between humankind and the Divinity.<sup>150</sup> He was viewed as a vessel for the reception and imparting of sanctification. The priest received grace through his invocation of the Deity. This grace was in turn imparted to sanctify the couple and thus formed the marital union at each stage.<sup>151</sup> According to Balsamon, the benediction given by the priest was a way of making present the same sanctifying blessing bestowed by the Savior in his redemption of marriage at Cana.<sup>152</sup> This notion is consistent with Blastares's thought on the formation of matrimony through benediction.

In summary, the words "either through a blessing, or crowning, or contract" are a description of three steps in the formation of a complete marriage; each of which involved the partial effects of matrimony and lead to the culmination of a complete union. The term "blessing" (εὐλογία) refers to formal betrothal. Such a betrothal established the negative effects of marriage, namely, the obligations of exclusivity and fidelity on the part of the future spouses. "Crowning" (στεφάνωμα) refers to the rite used in perfecting the union whose foundation was established in betrothal, so that the positive effects most exemplified in the sexual relations of husband and wife could be enjoyed. "Contract" (συμβόλαιον) denotes a written agreement that had a purely civil connotation, probably involving a transfer of property and expression of marital consent. Whereas the first two ways of establishing marriage were recognized by the Church, the last was most likely acknowledged only by civil law.

Blastares viewed the Eucharist as fulfilling a symbolic role in the nuptial rite by confirming the worthiness of both the couple and marriage itself. The crowning and betrothal blessing were considered sacerdotal benedictions. Such blessings were seen as an imparting of divine grace through the priestly vessel.

149. *Alphabetical Collection*, Γ. 9, Rhalles and Potles, 6:165.

150. *Alphabetical Collection*, Γ. 18, Rhalles and Potles, 6:191.

151. *Alphabetical Collection*, Γ. 9, Rhalles and Potles, 6:165.

152. Rhalles and Potles, 4:561.



## Select Bibliography

Blastares produced a diverse and large number of works, including translations, theological treatises, and canonical works, some of which have been published. In 1891, Archimandrite Arseniy of Moscow edited the correspondence of Blastares. J. Verpeaux published the hieromonk's list of offices in his *Pseudo-Kodinos Traité des offices*. P. B. Paschos edited Blastares's hymnographical work. A. Pavlov published Blastares's version of the canonical responses of Niketas of Herakleia (ca. 1050–death after 1117) and John of Kitros (twelfth or early thirteenth century). As stated above, the present translation is based on the text of the *Alphabetical Collection* published by G. A. Rhalles and M. Potles in volume 6 of their *Σύνταγμα τῶν θείων καὶ ἱερῶν κανόνων*. There are published versions of the *Alphabetical Collection* in Slavic languages, including Russian and Serbian.

Existing secondary material concerning Blastares is limited. Secondary works dealing with the Blastares include encyclopedia articles, two major books, and scholarly studies dealing with diverse aspects of his life and canonical work. In addition, the author's doctoral dissertation dealt with Blastares's canon law and theology of marriage.

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## Overview of the Translation

The following translation comprises forty-nine chapters of Blastares's work covered under eight letters of the Greek alphabet. It is based on the text published by G. A. Rhalles and M. Potles in volume 6 of their *Σύνταγμα τῶν θείων καὶ ἱερῶν κανόνων*. No critical edition of the *Alphabetical Collection* presently exists. Although based on an unedited text, this translation is offered to students of Byzantine history and theology as an interim solution to the problem of the scarcity of translated legal texts.

Information on abduction, homosexuality, and menstruation is found under Letter A. The material contained under Letter B deals mainly with restrictions on who is permitted to marry. The end of this section deals with the dignity ascribed to marriage. Material on the nature of marriage, remarriage, polygamy, forbidden unions, women, ordination of women, divorce, betrothal, married clergy, the use of virgins by priests, frequency of intercourse by married couples, sexual assault, and abortion can generally be found under Letter Γ. Sexual dreams and masturbation are covered under Letter K. Adultery, celibacy, monks, and nuns are treated under Letter M. The children of priests are dealt with under Letter T. Abortion is covered under Letter Φ. The nature of ordination and Christianity is discussed under Letter X.

The *Alphabetical Collection* rarely identifies the sources used for sections dealing with civil law. As an aid to the student, an attempt has been made to identify these sources with references to major Byzantine legal works. In this regard, the works of Spyros

Troianos and Nikolay Il'ich Il'inskiy were invaluable.<sup>1</sup> An emphasis will be placed on the Justinianian corpus, *Epanagoge*, *Prochiron*, *Basilika*, and the works of Byzantine canonist Theodore Balsamon. Texts from other major and minor works will be occasionally cited as also possessing similar content. Nevertheless, the citations should not be regarded as exhaustive.

With regard to the identification of sources for the ecclesiastical sections, in most cases comparisons to the referenced canonical texts as well as the commentaries of Theodore Balsamon, John Zonaras, and Alexios Aristenos will provide the reader with a basic understanding of the derivation of their content. A comparison will show that Blastares often summarizes or expands the content of the canons, particularly of St. Basil the Great, even when giving the appearance of a literal citation.

The bibliography includes works on Blastares as well as selected secondary literature dealing with Byzantine sexuality.

In Blastares's work, the word φθείρειν is used to denote illicit sexual intercourse and will be translated in most instances as "to commit *stuprum*."<sup>2</sup> The word βιάζω, which is used in connection with descriptions of sexual assault and literally means "to force," will be translated "to violate" in order to reflect the Roman legal concept of *per vim stuprum* or *stuprum* that occurs through force (*vim*). The word σχῆμα can be used to denote the outward appearance of a person and his or her status in life. Thus, in the case of monks, it can mean either the habit proper or the monastic way of life. Throughout the translation, the Greek word will be retained in its transliterated form, *schēma*.

1. Spyros Troianos, "Περὶ τὰς νομικὰς πηγὰς τοῦ Ματθαίου Βλάσταρη," *Ἐπετηρὶς Ἐταιρείας Βυζαντινῶν Σπουδῶν* 44 (1979–1980): 305–29; and Nikolay Il'ich Il'inskiy, *Sobraniye po alfavitnomu poryadku vsekh predmetov soderzhashchikhsya v svyashchennikh i bozhestvennykh kanonakh sostavlennoye i obrabotannoe smirenneyshim ieromonakhom Matfeyem ili Alfavitnaya Sintagma M. Vlastarya* (Simferopol': 1892; 2d ed., 1901).
2. For a discussion of the translation of the word φθορά, see Angeliki E. Laiou, ed., *Consent and Coercion to Sex and Marriage in Ancient and Medieval Societies* (Washington, DC: Dumbarton Oaks Research Library and Collection, 1993), 119–20, 127–28.

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## Letter A

### CHAPTER 13: CONCERNING THOSE WHO ABDUCT WOMEN FOR MARRIAGE

#### ANCYRA 11

The eleventh canon of the Council in Ancyra orders maidens who were betrothed to someone and then abducted by others, even if these lawlessly violated them, to be restored again to the men to whom they are betrothed, if at least the latter clearly choose to receive these women. However, if these men are unwilling, they shall not be compelled.

#### BASIL 22, 30

The twenty-second canon of Basil the Great states,<sup>3</sup>

One must not receive in repentance a man who has taken a wife by abduction before he would separate himself from her. And if she had been previously betrothed to someone, she must be restored to that one's authority, if at least the latter would wish to take her for a wife. However, if she were not previously betrothed to someone, she must be given up to her parents, or to those who are oth-

3. Basil the Great (330–379).

erwise related to her by blood. And if they agree, and she consents to the connection by marriage with the abductor, the cohabitation shall be established. But if they should not agree, then they will not be forced. Nevertheless, let him who committed *stuprum*<sup>4</sup> with a woman whether secretly with her consent, or who uses force, be subject to the penalty for fornication. Let him pass through the four places of repentance in four years: the first, outside the door of the temple while a mourner, a second while a hearer, a third while prostrate in repentance, and the fourth standing with the faithful, but abstaining from the Divine Mysteries. However, after reaching this point, at that time let him receive Communion.

The thirtieth canon ordered those who abducted women, and their accomplices, to remain excluded from prayers for three years with the hearers. It states, "Nevertheless, if the woman has willingly given herself, neither *stuprum* (which is properly spoken of concerning virgins) nor robbery preceding, viz., concealed intercourse, the man who takes her is free from the penance of the canon on the grounds that no force occurred. And most certainly, if she happens to be a free agent (clearly a widow), it was in her power to follow or not to follow." It states,

Indeed, we should pay no heed to pretences, that is to say, invention and hypocrisy. For there are times when a woman who was ashamed to give herself to her lover or beloved one, pretended to be abducted, but in reality, willingly followed. Therefore, if the abduction has occurred according to pretence, neither penances nor established laws against abductors shall be applied. Those who abducted women under parental authority shall be subject only to an action for injury; for parents may sunder a marriage that occurs contrary to their wishes.

#### FOURTH COUNCIL 28 AND SIXTH COUNCIL 92<sup>5</sup>

The twenty-eighth canon of the Fourth Council and the ninety-second of the Sixth Council determined the following: "those who abduct women under the pretence of marriage and their accomplices or accessories, if clerics are to be defrocked, and if laymen

4. Regarding the translation of *stuprum*, see the discussion in the "Overview of the Translation."
5. The reference is incorrect and should be Fourth Council 27 and Sixth Council 92.



to be anathematized." The canons even subject those who choose to aid them to the same punishment, and very reasonably so. Although a very unsound defense at any rate, the abductor alleges that it was love for the abducted woman that incited him to illicit action and that made his intentions violent. What sensible man would forgive the one aiding the abductor, who has nothing other than his own wickedness motivating him toward this abominable act which, along with other wicked results, lays waste to the good order of the commonwealth? An accomplice would be one who collaborates in performing the abduction. However, an accessory is one who offers advice and means for the act.

### LAWS

Concerning those men that abduct a betrothed, unbetrothed, or widowed woman, whether she is a noble, slave, freedwoman, and above all, if she were consecrated to God, even if someone abducted his own fiancée; if he committed the abduction with arms, whether swords or clubs, let such a man be punished with the sword. Let the ones cooperating with these men, whether witnesses or voluntary supporters, or those who contributed effort of any kind, after being beaten violently and sheared, have their noses slit, because they who choose to abduct are even ready to murder those who resist. However, if they committed the abduction without weapons of any kind, let the abductor have his hands cut off and let those assisting him in any manner, after being beaten and sheared, be exiled. The above holds whether the abduction has taken place with the woman's consent or without it, and especially if they tried to abduct a woman who lives with a husband. But also let the woman's parents be deported if they would not take meet vengeance against these men. If a slave is caught assisting in the act, let him be burned.<sup>6</sup>

Those who abduct, seduce, or commit *stuprum* with a female ascetic, a nun, a deaconess, or another woman possessing a pious *schēma*,<sup>7</sup> and their accomplices, are subject to the punishment of

6. Code 9.13.1; *Epanagoge* 40.45, Zepos, 2:363; *Prochiron* 39.40, Zepos, 2:220; Leo VI, *Novel* 35, Noailles, 140–43; *Basilika* 60.58.1, Scheltema, A8:3110–3112; *Nomokanon of Fourteen Titles* 9.30, Rhalles and Potles, 1:218; Balsamon's commentary on Chalcedon 27, Rhalles and Potles, 2:279; and Trullo 92, Rhalles and Potles, 2:521–22.

7. The Greek word *schēma* (σχῆμα) can be used to denote the outward appearance of a person and his or her status in life. Thus, in the case of monks, it can mean either the habit proper or the monastic way of life. Throughout this translation, the Greek word will be retained in its transliterated form.

the law discussed above, and their property is given by the bishops or archons to the church or monastery of the injured woman. This woman along with her property is to be put into a monastery where she will be securely guarded. Of course, if she were a deaconess with legitimate children, they receive their portion of her estate according to law.<sup>8</sup>

He that abducts a virgin or widow cannot marry her, not even by the consent of her father who pardons the crime.<sup>9</sup>

Let not the abducted woman be married to him that abducted her, but if her parents agree to such a cohabitation, they are deported.<sup>10</sup>

He that abducts a maiden is punished in one way, and the one that commits *stuprum* with a virgin by force, in another way. For while abduction is not pardonable on account of the abductor's insolence, *stuprum* that occurs by force is pardonable if it is accepted by the violated woman, and it is permissible for these to marry.<sup>11</sup>

The abducted woman who does not wish to be legally joined with her abductor gains his property. However, if she would wish this, then her property, that of the abductor, and those who consent to this evil, whether they might be parents or unrelated persons, are confiscated as public property.<sup>12</sup>

Abduction is a greater crime than adultery. The man that abducted a virgin or an already married woman is punished to the utmost, even when a stranger brings the accusation, and if the girl's father who was besought condoned it.<sup>13</sup>

If a slave was to inform against an abduction of a virgin, or exposes an abduction that was already condoned, he is set free.<sup>14</sup>

A man that abducts or hides another slave who is a whore is considered neither a thief nor a kidnapper, because he has done

8. Justinian, *Novel* 123.43; *Basilika* 4.1.15, Scheltema, A1:117–18; *Nomokanon of Fourteen Titles* 9.30, Rhalles and Potles, 1:218–19.
9. *Code* 9.13.1 § 2; *Epanagoge* 17.29, Zepos, 2:280; *Prochiron* 7.27, Zepos, 2:139; *Basilika* 28.5.14 (13), Scheltema, A4:1348; *Nomokanon of Fourteen Titles* 13.5, Rhalles and Potles, 1:303.
10. Justinian, *Novel* 143 § 4; *Basilika* 60.58.4, Scheltema, A8:3112; *Nomokanon of Fourteen Titles* 9.30, Rhalles and Potles, 1:218; Balsamon's commentary on Apostles 67, Rhalles and Potles, 2:86, and Trullo 92, Rhalles and Potles, 2:521.
11. Balsamon's commentary on Apostles 67, Rhalles and Potles, 2:86.
12. Justinian, *Novel* 143.2; *Basilika* 60.58.5, Scheltema, A8:3112–13; *Nomokanon of Fourteen Titles* 9.30, Rhalles and Potles, 1:218.
13. *Digest* 48.6.5. § 2; *Basilika* 60.18.5, Scheltema, A8:2882; *Nomokanon of Fourteen Titles* 9.30, Rhalles and Potles, 1:218.
14. *Code* 7.13.3; *Basilika* 48.18.3, Scheltema, A6:2248; *Nomokanon of Fourteen Titles* 9.30, Rhalles and Potles, 1:217.

this not on account of theft, but for pleasure. Nevertheless, he is fined by the archon and is chastened.<sup>15</sup>

The seventeenth Justinian novel forbids places of asylum to be maintained for the abductors of virgins.<sup>16</sup> See this in the thirteenth chapter of Letter E.

But even during the days of Pascha, the abductors of virgins are imprisoned and put in chains.<sup>17</sup> Also see the laws in the seventh chapter of Letter Π.

## CHAPTER 14: CONCERNING HOMOSEXUALITY

### BASIL 7 AND 62

Basil the Great in his seventh, as well as sixty-second canon, states, "Let the man that commits an unseemly act with men, and repents, be subject to the appropriate penalties of repentance for fifteen years, and after this let him be deemed worthy of Communion."

### NYSSA 3

However, Gregory of Nyssa<sup>18</sup> lengthens their repentance to eighteen years.

### JOHN THE FASTER<sup>19</sup>

John the Faster states,

If a boy was polluted by a man, if he received the ejaculation in the thighs, let him be allowed to enter the priesthood after being subjected to the appropriate penitential discipline. However, if in the anus, let him not all be deemed worthy of priestly rank. Although on account of his youth, he himself did not sin, yet his vessel<sup>20</sup>

15. *Digest* 47.2.39; *Basilika* 60.12.39, Scheltema, A8:2830; *Nomokanon of Fourteen Titles* 9.30, Rhalles and Potles, 1:218.

16. Justinian, *Novel* 17.7; cf. *Basilika* 6.3.28, Scheltema, A1:181–82.

17. *Code* 1.4.3; *Basilika* 7.17.26, Scheltema, A1:392–93; *Nomokanon of Fourteen Titles* 9.30, Rhalles and Potles, 1:215.

18. Gregory of Nyssa (331/40–ca. 395)

19. John IV the Faster, Patriarch of Constantinople (582–595).

20. The word "vessel" (τὸ σκεῦος) is used to denote the body, cf. 2 Cor 4:7; 1 Thess 4:4; and 1 Pet 3:7.

was wrecked, and it is not possible for him to perform priestly functions because he has been defiled.<sup>21</sup>

## LAW

Let men that perform and experience lascivious acts be punished by the sword, unless the one who experiences the act is less than twelve years old, because then the insufficiency of such an age releases him from the penalty.<sup>22</sup>

### CHAPTER 16: CONCERNING MENSTRUATING WOMEN

#### DIONYSIOS 2

The holy hieromartyr of Alexandria<sup>23</sup> in his second canon orders menstruating women neither to approach the divine table nor to commune of the Undeiled Mysteries. Indeed, the woman with a flow of blood did not even dare to touch the Lord, short of the border of His outer garments. There is no objection for those women in such a condition to remember the Lord and by themselves to beseech Him to receive help. It is dangerous and precarious for one that is not entirely pure to approach the Holy of Holies. Women that are troubled by the monthly flow are said to be “menstruating” because of their separation of themselves as impure from the seating of other women. Indeed, Hebrew women who experienced this kept quiet, sitting in their own place until seven days passed and the monthly flow stopped. Certainly at the present time, such women are excluded not only from the altar, into which long ago it was permitted for them to enter, but also from the temple and the area in front of the temple.

The sixth canon of Timothy<sup>24</sup> also states that it is illicit for women who are in such a condition to partake of the Divine Mysteries before being purified.

21. The contents of this passage are similar to those of canon 19 of John the Faster.
22. Justinian, *Institutes* 4.18.4; Justinian, *Novel* 77; Justinian, *Novel* 141; *Ecloga legum* 17.38, FBR, 10:238; *Ecloga aucta* 17.6, FBR, 3:71; *Ecloga privata aucta* 17.11, Zepos, 6:41; *Epanagoge* 40.66, Zepos, 2:365; *Prochiron* 39.73, Zepos, 2:225–26
23. Dionysios the Great, Patriarch of Alexandria (247 / 48–264 / 65).
24. Patriarch Timothy I of Alexandria (d. 355). These are the contents of the seventh canon.

LAWS

The seventeenth novel of the emperor Leo the Wise<sup>25</sup> states, "We decree concerning women giving birth, who are accustomed to purify themselves by a natural flow, if other maladies do not place them in danger, that the uninitiated defer illumination until the fortieth day, and those who have been initiated put off the partaking of the Divine Mysteries. However, if some disease strikes them, which threatens destruction of life, the former are immediately deemed worthy of illumination and the latter, Holy Communion."<sup>26</sup>

25. Emperor Leo VI the Wise (866–912).

26. Leo VI, *Novel 17*, Noailles, 62–69; Balsamon's commentary on canon 2 of Dionysios of Alexandria, Rhalles and Potles, 4:9.



## Letter B

### CHAPTER 8: CONCERNING MARITAL DEGREES

I certainly do not believe that anyone who understands these matters well would accuse us of ignorance by what is shown now and by the things which are stated concerning marital degrees, and concerning the nearness and distance of their kinship. From this account, those that came together who have an impediment are clearly exposed and separated. Certainly some say that the degrees are understood by the metaphor of a ladder's steps. For as ascent and descent takes place by these steps, so both ascendants and descendents are found through degrees of kinship. Those that do not have a place on the ladder are determined from the collateral line. The degrees have been formed by nature to advance by the order of births. It has been thought that each birth completes one degree. Some of these degrees extend out in width, others in height. Those of width preserve the same rank toward one another. Thus, those who are sons all hold the first degree. Brothers hold the second degree toward one another, even if they would number more than ten. It is necessary that there be no more than two, because they are related by the same blood from a marriage. In this way, if, after considering only the brothers, we say that they are of the second degree, this is evidently by reason of their compound birth. Likewise, the nephews hold the third degree, the first cousins (πρωτεξάδελφοι) hold the fourth, the second cousins (δισεξάδελφοι) hold the sixth, and the rest in succession. Not all

according to height hold the same degree, but the sons occupy the first, the grandsons the second, the great-grandsons the third, and likewise in arithmetical progression. It is more correct for the degrees to be numbered not by births, as supposed by ancient authorities, but according to the kindredness and nearness of the lineage, and also the distance to the first principle of the lineage. For between the father and son, there is a small distance; and between grandfather and great-grandson, a greater one; and great-great-grandson to the same one, still greater. In this way, they also have collateral relations.

### DISTINCTION OF KINSHIP

Kinship, which is a general term, is divided according to a first distinction into two categories: kinship by nature and kinship by adoption (θέσις). Father, son, mother, daughter, brother, nephew, ἐξανέψιος (who is born from the nephew), etc., are related by nature. Father-in-law, brother-in-law, son-in-law, and adopted son are related by adoption (θέσις). Kinship by nature is subdivided into two categories: into that legitimate with marriage and that occurring out of fornication. Kinship by adoption (θέσις) is itself subdivided into affinity (ἀγχιστεία) and adoption (θέσις). A kinship that results from connection by marriage is an affinity. Affinity is the relationship of persons who are conjoined to us by marriage without natural kinship. However, adoption (θέσις) is sonship (υἰοθεσία) without fleshly union.

### CONCERNING THE PRACTICE OF ADOPTING A BROTHER (ἀδελφοποιία)

Nevertheless, the practice of brother adoption (ἀδελφοποιία) is not legal. Indeed, we, who are childless, contrived adoption (υἰοθεσία) for the inheritance of property. However, no legitimate motive enters into brother adoption. Certainly the law indicates what is legitimate. However, it does not accept such motives for brother adoption.

According to a subdivision in turn, kinship by affinity is either formed from two lineages, for example, an uncle and nephew who are united to an aunt and niece, or two male first cousins to two female first cousins (and this is termed affinity proper); or also when another person has been inserted between these two lineages (and this is called trilineal affinity). These relationships are both impeded and unimpeded, as will be shown in the following.



Adoption (θέσις) takes place either by an adoption of a son (υἰοθεσία) for succession, or by the acceptance of responsibility from divine baptism for support and instruction, as well as on account of bearing witness. But adoption of a son (υἰοθεσία) also involves inheritance, and for this reason had been created. And adoption from holy baptism is examined in regard to marital degrees alone. So much for the more general distinction of kinship. We shall now discuss the particular types of kinship, beginning with consanguinity.

### CONCERNING KINSHIP BY CONSANGUINITY

Those who are homogeneous and consanguineous are divided accordingly into ascendent, descendent, and collateral relations. Persons that have given birth to us are ascendents, as for example, father and mother, grandfather and grandmother, and ones earlier than these. Persons that have been born from us are descendents, as for example, son, daughter, grandson, granddaughter, great-grandson, great-granddaughter, and so on. Persons that neither gave birth to us, nor were born from us, but who are related by one and the same origin and derivation are collateral relations, as for example, brother, sister, uncle, aunt, nephew, niece, male cousin, female cousin. Persons that lie beyond these are of course obscure relations.

### CONCERNING ASCENDENTS AND DESCENDENTS

Ascendents are impeded infinitely from being married to descendents, even if they are not from legitimate marriages. Thus, a grandfather cannot be joined to his granddaughter. However, we say infinite according to possibility, not infinite by nature; for the offspring are not immortal.

### CONCERNING THE SEVENTH DEGREE OF CONSANGUINITY

The eighth degree permits marriage for collateral relations, whereas the seventh degree impedes this absolutely. Thus, one is not able to take the daughter of a second cousin. But while a marriage of the seventh degree of consanguinity requested beforehand was forbidden, an attempted one was not impeded in any way, but was censured on account of the law's silence, which forbids marriage only up to the sixth degree.

## LAW

Thus the law states, "It is not right for me to take the daughter of my brother or sister in marriage, nor their granddaughter, who is of the fourth degree; nor the daughter of an uncle, namely a first cousin; nor for my son to marry their granddaughter, both of whom are called second cousins."<sup>27</sup>

Because some persons celebrated such marriages secretly because of the heaviness of the punishments, matters concerning this were referred to the Synod when Luke the Divine ruled the patriarchal throne.<sup>28</sup> Consequently, the Holy Synod determined and ordered that such a marriage not at all be attempted or established; one requested to be forbidden; one attempted to be broken up; they who contracted it to be excommunicated; and the priest who married them, if he did this secretly and not on account of ignorance, to be defrocked.<sup>29</sup> A decree of the celebrated emperor Manuel Porphyrogennetos confirmed this synodal act.<sup>30</sup> In this way, one is not permitted to marry the daughter of his second cousin, who happens to be his niece. Thus, the law bridled marriage with what is by nature righteous, decent, and honorable.<sup>31</sup>

## CONCERNING THE EIGHTH DEGREE OF CONSANGUINITY

A consanguineous marriage attempted in the eighth degree has been permitted. Thus, there is no impediment whatsoever in marrying a third cousin or the granddaughter of a second cousin. The civil laws, which desire that the legitimacy of subjects be widened and not be limited only to family, forbade marriages between those of the collateral line, so that those who are joined by necessity to persons outside of their kin would have legitimacy and favor in relation to them.

CONCERNING THOSE WHO ARE  
BEGOTTEN FROM FORNICATION

All who are born out of fornication do not have one name, but are subdivided. Thus, if a child was born of a woman who was always

27. *Institutes* 1.10 § 3; *Epanagoge* 17.4, *Zepos*, 2:278–79; *Prochiron* 7.4, *Zepos*, 2:135; *Basilika* 28.5.2, *Scheltema*, A4:1344.

28. Luke Chrysoberges, Patriarch of Constantinople (1156–1169); for a text of the decree, see *Rhalles and Potles*, 5:95–98.

29. John Pediasimos, *Treatise Concerning Marriage*, *FBR*, 1:143.

30. Manuel I Komnenos, Emperor (1143–1180); for a text of this confirmation, see *Zepos*, 1:408–10.

31. Demetrios Chomatenos, *Concerning Degrees of Kinship*, *Rhalles and Potles*, 5:423.

publicly living with a certain man, he is called natural, holds a second rank toward the legitimate by nature, and is to be more preferred in inheritance than ascendants, to say nothing of those from the collateral line. If his origin is known, yet is not from the cohabitation of the woman with a man, he is called a bastard. However, if his origin is altogether uncertain, he is called "obscure," as Homer said,

She became a mother obscurely.<sup>32</sup>

We will not say anything concerning these because they neither enter into marital contracts nor can a claim be made by them on inheritance.

### LAW

The law also states, "No one receives a sister born from fornication,"<sup>33</sup> and, "The fornicator with a certain woman, if indeed the fornication is public, is forbidden to marry her stepmother, but he is able to marry her second cousin."<sup>34</sup>

### CONCERNING KINSHIP BY AFFINITY

So much for kinship by consanguinity. The concept of kinship by affinity is more complex. In these cases, the ancient authorities did not at all think to seek the number of degrees, but expressly forbidding what confused family relationships and is unseemly, they permitted the remaining blameless things. However, modern authorities contrived degrees for these and gave permission to attempt unions beyond the sixth degree. And yet we clearly find both a sixth being permitted and a seventh being forbidden, the latter as not confusing, the former as confusing. Therefore, it was not necessary to introduce degrees into these matters. Although whatever the law expressly forbade was necessary to avoid; whatever was not forbidden is to be received. The older law forbade the nearer and more closely connected to marry.

### LAW

The law states,

The mother, grandmother, and great-grandmother of my wife are mothers-in-law, and I marry none of them.

32. Homer, *Iliad* 6.24.

33. *Digest* 23.2.54; *Epanagoge* 17.19, Zepos, 2:279; *Prochiron* 7.17, Zepos, 2:138; *Basilika* 28.5.8 (7), Scheltema, A4:1346; *Prochiron auctum* 8.73, Zepos, 7:70.

34. Demetrios Chomatenos, *Decision*, Rhalles and Potles, 5:439.

The wives of my son and grandson, and the spouse of my great-grandson, are called daughters-in-law. The daughter from another man, of my wife, as well as the granddaughter and great-granddaughter of another man, are called stepdaughters. I marry none of these.<sup>35</sup> Nor my stepmother, even if my father had many, because they have the rank of mothers;<sup>36</sup> nor may a stepmother marry the former husband of my stepdaughter;<sup>37</sup> nor may I marry the daughter of the woman separated from me, who after the separation was born from another man.<sup>38</sup>

The *Tomos of Sisinnios* forbade two brothers to marry an aunt and niece, and vice versa.<sup>39</sup> Two brothers were also forbidden to marry two first cousins. The fifth degree is observed in the first case, and the sixth in the second. Therefore, up to the fifth degree all have been forbidden on account of affinity, if it might be necessary to count degrees for these. If those of the sixth degree do not have confusion regarding kinship names, they are not impeded. However, if a confusion of names is apparent, they are forbidden to marry.<sup>40</sup>

#### AN UNIMPEDED SIXTH DEGREE

Indeed all other authorities forbid a marriage that consists of the first and the fifth degrees. But Michael Choumnos of Thessaloniki, in his own decision declares it unimpeded, if, for example, a father and son, who are of the first degree, are joined to a lesser aunt and niece, who are of the fifth degree.<sup>41</sup>

35. *Digest* 23.2.14; *Epanagoge* 17.8, 7, Zepos, 2:279; *Prochiron* 7.13, 7, Zepos, 2:137; *Basilika* 28.5.3 (2), Scheltema, A4:1345–46.

36. *Institutes* 1.10. § 7; *Epanagoge* 17.9, Zepos, 2:279; *Prochiron* 7.12, Zepos, 2:137; *Basilika* 28.5.2, Scheltema, A4:1345.

37. *Digest* 23.2.15; *Epanagoge* 17.12, Zepos, 2:279; *Prochiron* 7.14, Zepos, 2:137; *Basilika* 28.5.4 (3), Scheltema, A4:1346.

38. *Institutes* 1.10 § 9; *Epanagoge* 17.15, Zepos, 2:279; *Prochiron* 7.9, Zepos, 2:137; *Basilika* 28.5.2, Scheltema, A4:1345.

39. The *Tomos of Sisinnios* was a synodical decree concerning marital impediments. It was issued in 997 by Sisinnios II, Patriarch of Constantinople (995–998); for additional information, see V. Grumel, *Les Regestes des Actes du Patriarcat de Constantinople*, vol. 1, *Les Actes des Patriarches*, fasc. 2, *Les Regestes de 715 à 1043* (Socii Assumptionistae Chalcedonenses, 1936), 231–33; H. G. Beck, *Kirche und Theologische Literatur im Byzantinischen Reich* (München: C. H. Beck'sche, 1959), 554; for a text of the decree, see Rhalles and Potles, 5:11–19.

40. John Pediasimos, *Treatise Concerning Marriage*, FBR, 1:143–44.

41. Michael Choumnos (d. 1133), a metropolitan of Thessaloniki; for additional information, see Beck, 659. A lesser aunt is the daughter of a great aunt. A lesser niece is the daughter of a first cousin.

## AN IMPEDED SIXTH DEGREE

However, if the sixth degree of affinity being examined is composed from second and fourth degrees; if confusion takes place, the second marriage has been forbidden. Thus, it is not possible for two brothers to be joined to first cousins, or vice versa; for they become the husbands of two sisters<sup>42</sup> instead of brothers, and hence the names of kinship are confused. Basil the Sacred and Great states, "Marriage is unlawful in those cases in which the names of kinship are confused."<sup>43</sup>

## AN UNIMPEDED SIXTH DEGREE

However, if confusion does not occur, the sixth degree is unimpeded. Thus, it is not forbidden for a grandfather and grandson to be joined to a great-aunt and niece. Although this is of the sixth degree, it is without confusion because after the marriage they preserve once more their positions of grandfather and grandson. In addition, many call a great-aunt and a great-uncle (or, the sister and brother of a grandfather), grandmother and grandfather. On account of this, the present case in question has been permitted by both the law and the *Tomos of Sisinnios* as being unimpeded. However, that which causes confusion has been forbidden.

## AN UNIMPEDED SIXTH DEGREE

And if they are from the third and third, and there is no confusion, the union is unimpeded. For example, when an uncle and nephew marry an aunt and niece, no confusion occurs. For once more, they preserve their positions of uncle and nephew. The silence of the decreed law, notwithstanding imperial decrees and synodal acts, has made known to all that on account of this, the marriage is absolutely unimpeded.

## AN IMPEDED SIXTH DEGREE

When the uncle took the niece in marriage beforehand, but the nephew wishes to marry the aunt, what comes to pass has been forbidden on account of confusion. For by the marriages, the uncle becomes a nephew and the nephew, an uncle. This is a manifest confusion of the names of the kinship.

42. In other words, they become brothers-in-law.

43. This is not an exact quote of St. Basil, but an adaptation of his *Letter 160* made in the *Tomos of Sisinnios*, Rhalles and Potles, 5:14.

## AN IMPEDED SEVENTH DEGREE

In addition, a marriage considered in the seventh degree of affinity, if it consists of the first and sixth degrees, has been forbidden. Indeed, it is not fit for a father and son to be joined to two second cousins because they become brothers-in-law instead of father and son.

## AN UNIMPEDED SEVENTH DEGREE

However, if they are from the second and fifth degrees, there is no confusion at all. The second marriage is without reproach for either a grandfather and grandson or two brothers that are joined to a lesser aunt and niece.

## AN UNIMPEDED SEVENTH DEGREE

If they are from the third and fourth degree, again, if the lineage is not confused, the marriage has been permitted. Thus, an uncle and a nephew can take two first cousins in marriage without impediment.

## AN IMPEDED SEVENTH DEGREE

If it is observed that a union has confusion, it is of course not permitted. Thus, a grandfather and great-grandson are barred from marrying two first cousins, in order that they not be reckoned as sons-in-law. However, he who married first remains unaffected. The one who then attempts marriage is impeded, or the preceding one is separated. However, unions beyond the seventh degree of affinity are not meddled with and are unimpeded, just as it is in the case of consanguinity that unions beyond the eighth degree are unimpeded. It has not been correctly stated by some authorities that unions found in the sixth degree of affinity, when they are equal (so that three degrees are of each member), are not impeded, having been impeded when they are unequal. Rather, it has been shown above that it is not equality and inequality, but confusion and lack of confusion that either permits or prohibits the contract.

THAT THE SAME MAN IS NOT PERMITTED TO MARRY  
TWO FEMALE SECOND COUSINS

The Church has forbidden one and the same man to marry two female second cousins. For a seventh degree of affinity is not formed,

as some believe, but a sixth, on account of reckoning the husband with the wife to be one degree. For after this was examined in the days of Patriarch Nicholas,<sup>44</sup> it was prohibited by the Church. Also, a decree of the celebrated emperor Manuel<sup>45</sup> was issued which determined that it should never take place. But, for what reason are marriages in the seventh degree of affinity, or two lineages, dissolved? The unity is either by nature or by adoption (θέσις). Unity is by nature, for example, in the case of one humanity (ἄνθρωπος). And unity is by adoption in the case of a husband with a lawful wife, whom mutual relations and fleshly union united; and of whom it has been stated, "And the two shall become one flesh."<sup>46</sup> Therefore when the connection is consanguineous and of one lineage, kinship and unity are by nature. However, when the connection is by affinity and of two lineages, the unity is by adoption, and their relationship is not a consanguineous relationship. And therefore, in a degree that falls before the eighth, such a marriage and union is immediately dissolved. For those that have more union also require a greater distance for their dissolution, just as those that are less united are in need of a lesser distance.

#### CONCERNING TRILINEAGE

Marital cases of trilineage are also cases of affinity, but by the combination of a third lineage, these marriages are permitted more easily than those that have been combined from two lineages. For just as these are lower by two degrees than those of consanguinity (indeed marriages in the eighth degree, and sometimes even those in the sixth, are dissolved by the affinity of both lineages), so in turn trilineal marriages, which are lower by two degrees than those of two lineages, are immediately permitted in the fourth degree. Although for the most part, it is not necessary to seek degrees in these cases, but to inquire if it would not be expressly forbidden by the law. Certainly, the fourth degree even results in unimpeded marriages.

#### A FOURTH UNIMPEDED DEGREE

For example, such a case was both raised and solved during the time of Patriarch Styppes.<sup>47</sup> A certain Constantine took for a wife

44. Nicholas III Grammatikos, Patriarch of Constantinople (1084–1111).

45. Manuel I Komnenos, *Novel* 78; cf. Rhalles and Potles, 1:284, and Zepos, 1:425.

46. Gen 2:24 (LXX).

47. Leo Styppes, Patriarch of Constantinople (1134–1143).

Ann, the sister of one Theodore. When she died, he took for a second spouse Irene, the sister of Theodore's wife. In this way, there are four degrees; for Theodore and Ann are of the second degree, the wife of Theodore and Irene are of the second degree, and are all together four. The law forbids only marriages of two degrees by trilineage, which consist of those who are only of one degree and not more.<sup>48</sup>

## LAW

For example, I am not able to take the former wife of my stepson, nor can a stepmother take the former husband of her stepdaughter, although there is trilineage in these cases.<sup>49</sup> But because a stepson and a stepdaughter hold the position of son or daughter in relation to a stepfather or stepmother, and because his wife or her husband hold the position of daughter-in-law or son-in-law in relation to them, such marriages are unlawful. The husband and wife, the closest point of two lineages, do not hold a degree either among themselves or in relation to the intermediate lineage. For we do not assign the union of husband and wife a degree, but reckon it to be a unity when it is seen by itself.<sup>50</sup> Indeed, the wife of my brother, on account of her close union with him, holds a second degree in relation to me, through careful consideration of the law uniting them. However, when the degree is sought for another person kindred to her, we do assign the union of husband and wife a degree. Thus, my sister-in-law's sister is of the second degree in relation to her sister, but of the fourth in relation to me. My sister-in-law's aunt in relation to the sister is of the third degree, but is of the fifth in relation to me.<sup>51</sup> Likewise also in other cases. Thus, it is not possible that a brother is also reckoned one flesh with his sister-in-law, as if he was a husband, and by a device of thought is joined with her through the power of the law. For they do not occupy a first collateral degree, but begin from the second.<sup>52</sup> Therefore, the law has prohibited only trilinear marriages of the first degree, as has been said. However, prevailing custom does not hold things in accordance with what is unprohibited beyond the first degree of trilineage.<sup>53</sup>

48. The text of the decision is lost.

49. *Digest* 23.2.15; *Epanagoge* 17.11, 12, Zepos, 2:279; *Prochiron* 7.13, 14, Zepos, 2:137; *Basilika* 28.5.4 (3), Scheltema, A4:1346.

50. John Pediasimos, *Treatise Concerning Marriage*, FBR, 1:152.

51. *Prochiron auctum* 8.80–82, Zepos, 7:70.

52. Eustathios Rhomaios, *Verdict*, Rhalles and Potles, 5:345.

53. John Pediasimos, *Treatise Concerning Marriage*, FBR, 1:152.



## A THIRD UNIMPEDED DEGREE

For example, a certain man had a wife. Some time later after she died, he took for a second spouse the wife of her uncle. Another man took the stepdaughter of his wife's brother. Certainly in these cases, three degrees plainly appear, but the marriages are allowed according to custom. Of course, strictness, as we said, requires the fourth degree in these cases. Indeed, it is necessary that the closeness of the affinity be bent a little, and under these circumstances the marriage will be licit.

## FOURTH

For example, the wife of my wife's brother is just as closely related to the intermediate lineage as I am related to it. Therefore, my brother is able to take her in marriage blamelessly after my wife's brother dies, or I her sister, but it is illicit for me to marry the wife.

## FOURTH

Again, I received a brother-in-law by my sister, whose sister-in-law by his late brother I myself took for a wife. This is unimpeded because my wife is also found to be of the fourth degree and is a bit removed from the kinship of the intermediate lineage. The person who is closely connected to this lineage is my sister, whereas I am connected collaterally and a bit further from the intermediate lineage.

## FOURTH

Again, I acquired a son-in-law through my daughter. It is not legal for me to take for a wife my son-in-law's sister-in-law by a late brother because she is connected closely to the intermediate lineage; but to take her sister would not be illicit.

But both a brother-in-law and a wife's brother who are widowers in no wise take an aunt and niece in marriage. But it is permitted for him whose wife has died, to marry the sister of his brother-in-law.<sup>54</sup>

But indeed, one is permitted to marry the daughter of his late wife's second cousin, as well as the lesser aunt of his wife, that is, the first cousin of his father-in-law.

54. The term used here is *σύγγαμβρος* (a brother-in-law married to the sister of one's wife).

However, it has been forbidden for one to marry the first cousin of his late wife.

But it is licit for a brother and sister of two wives, who are married to two brothers, to be joined.

The decree of Patriarch Leo Styppes permits a brother-in-law and wife's brother to marry two sisters who are of the fifth degree.<sup>55</sup>

However, the same decree, as well as that of Patriarch Arsenios, rules that two brothers are not forbidden to marry a wife and a husband's sister.<sup>56</sup>

The uncle and brother-in-law by a first cousin are not forbidden to marry two sisters, although a sixth degree occurs.

But it is also not forbidden for a brother-in-law and wife's brother to marry two first cousins, although a seventh degree occurs.

The decision of Patriarch Michael permits the daughter of a certain John and the niece of his wife to be paired with two brothers.<sup>57</sup>

Nevertheless, certain ones decided that the case of a brother-in-law (σύγγραμβρος) taking one sister after his brother-in-law takes one, is to be classified among some of the illicit things discussed previously.

And in addition, the wife's brother's marriage to a sister-in-law by a brother of his own brother-in-law is as illicit as that very union which Choumnos of Thessaloniki deemed to permit by his own decision; the father and son taking a lesser aunt and niece.

## LAW

For the law states, "In marriages we not only seek what has been permitted but also what is seemly."<sup>58</sup>

## CONCERNING ADOPTION

So much for trilineage. We have been taught from the sacred canons and pious laws to regard adoption (which occurs on account

55. The text of the decision is lost.

56. Arsenios Autoreianos, Patriarch of Constantinople (1255–1259, 1261–1265); for an interesting reference to the decree, see Rhalles and Potles, 5:82.

57. Michael III, Patriarch of Constantinople (1170–1178); cf. Rhalles and Potles, 5:100. The customary designation, τοῦ Ἀγχιάλου, is incorrect; see *The Oxford Dictionary of Byzantium*, 2:1364.

58. *Digest* 23.2.42; *Epanagoge* 17.18, Zepos, 2:276; *Prochiron* 7.16, Zepos, 2:137; *Basilika* 28.5.7 (6), Scheltema, A4:1346.

of inheritance) in the same way as consanguinity in relation to marital degrees and inheritance from parents.

## LAW

For the law states,

I am not able to take aunts on my father's or mother's side for a wife, even if indeed they are adopted, because these who happened to be adopted by my grandfather hold the rank of mothers and occupy the position of sister in relation to my father, and of aunt to myself.<sup>59</sup> A stepfather cannot marry the daughter or granddaughter of a stepson; nor can an adopted son marry the spouse of a stepfather, or her mother, her sister, or her granddaughter by a son.<sup>60</sup>

If the tutor or one that became a curator wished to adopt the husband or father of a woman who is under the tutorship or who is subject to the curator, the adoption is invalid. Nevertheless, the marriage is dissolved, just as it is dissolved whenever one might adopt his own brother-in-law.<sup>61</sup>

## NOVEL

The twenty-fourth novel of the emperor Leo the Wise, which forbids an adopted person to be joined by means of marital intercourse with all those of their adopter, adds,

Formerly indeed adoption did not take place by law, but now, given that it takes place according to fitting and righteous regulation and that by a sacred rite some have been placed in the rank of parents and others in the rank of children, there is no longer any reason to permit adopted children to unite by marriage with children procreated according to nature by the adopter. Nor is there any reason to permit the name of brothers to be changed as a result of marriage, so that they are sons-in-law instead of brothers.<sup>62</sup>

59. *Institutes* 1.10; *Epanagoge* 17.5, Zepos, 2:276; *Prochiron* 7.5, Zepos, 2:135–36; *Basilika* 28.5.2, Scheltema, A4:1344.

60. *Digest* 23.2.55; *Epanagoge* 17.20–21, Zepos, 2:276–77; *Prochiron* 7.18, Zepos, 2:138; *Basilika* 28.5.9 (8), Scheltema, A4:1347.

61. *Digest* 23.2.67 § 3; *Basilika* 28.4.24, Scheltema, A4:1331; *Nomokanon of Fourteen Titles*, Rhalles and Potles, 1:278–79.

62. Leo VI, *Novel* 24, Noailles, 92–95; Balsamon's commentary on Trullo 53, Rhalles and Potles, 2:429–30.

### THAT EVEN EUNUCHS ADOPT

While the law states that adoption imitates nature, and on account of this, forbids eunuchs to adopt and to have authority over anyone, the twenty-sixth novel of the same emperor decreed that even this takes place unimpeded.<sup>63</sup>

### THAT EVEN VIRGINS ADOPT

The twenty-seventh novel of the same emperor allows virgins to adopt; dependent and independent adoptees to have rights of inheritance from these women; and there to be no need of an imperial command or judicial act.<sup>64</sup>

### CONCERNING SPONSORSHIP FROM HOLY BAPTISM

#### SIXTH COUNCIL 53

Adoption, which takes place through sponsorship from holy baptism, does not enter into inheritance, but is only examined in regard to marital degrees, as has been said. The fifty-third canon of the Sixth Council states, "Because spiritual kinship is superior to bodily union, we decree that children who were received from holy and salvific baptism, and after this who were joined in marriage to their widowed spiritual mothers, desist from such cohabitation, and thereafter be subject to the penalties of fornication." Thus, he that does not depart readily from evil and does not confess is condemned as incestuous.

#### LAW

The law states, "Nevertheless, he that receives a female godchild from holy baptism, cannot afterward take her in marriage because she now becomes his daughter. Nor may he marry his godchild's mother or daughter. This also applies to the sponsor's son. Because nothing else can introduce a paternal state and impediment of marriage like this bond by which God mediates the joining of their souls."<sup>65</sup>

63. Leo VI, *Novel 26*, Noailles, 100–105; Balsamon's commentary on Trullo 53, Rhalles and Potles, 2:430.

64. Leo VI, *Novel 27*, Noailles, 104–11; Balsamon's commentary on Trullo 53, Rhalles and Potles, 2:430.

65. *Code 5.4.26 § 2*; *Epanagoge 17.31*, Zepos, 2:280; *Prochiron 7.28*, Zepos, 2:139; *Basilika 28.5.15 (14)*, Scheltema, A4:1348; *Nomokanon of Fourteen Titles*, Rhalles and Potles, 1:303–304; Balsamon's commentary on Trullo 53, Rhalles and Potles, 2:431.

Accordingly, some maintain that because according to canon and civil law, spiritual kinship is determined to be stronger than fleshly kinship, it is necessary for those united by spiritual kindredness to observe the degrees that impede marriage until the seventh degree; clearly as many degrees as for blood kinship. However, this did not seem true to most authorities, who held that only persons specified by the decreed law were to be impeded.<sup>66</sup>

Nevertheless, degrees of either type of adoption are numbered differently from degrees of consanguinity. For although the father is in every way of the first degree in relation to all his own brothers, this spiritual father is of the first degree in relation to the child who was adopted, and of the second to the child's fleshly father, because the spiritual one is considered his brother.<sup>67</sup> The spiritual father is reckoned to be of the third degree in relation to the brothers of his spiritual son because he did not also have these sons. However, the son is of the second degree in relation to his fleshly brothers, and of the first to his fleshly father as well as spiritual one.<sup>68</sup>

On account of this, it is permitted for he that wishes to take the sister of his *synteknou* (συντέκνου) in marriage.<sup>69</sup>

But he that becomes a sponsor of his own son at holy baptism is separated from his wife.<sup>70</sup>

#### CONCERNING MARRIAGES THAT HAVE BEEN FORBIDDEN AND ARE WITHOUT KINSHIP

There are also times when, without any one of the five kinships mentioned, the union is impeded. For example, the accused adulterer, even if not clearly convicted, cannot take his alleged partner for a wife. Nor can an emancipated slave marry the wife of his former master after the latter's death. For if they marry, this would give the impression that while the master was still living, the slave was committing adultery with the wife.<sup>71</sup>

66. Balsamon commentary on Trullo 53, Rhalles and Potles, 2:429.

67. The text should probably read that the father by blood is reckoned to be of the second degree in relation to his own brothers.

68. John Pediasimos, *Treatise Concerning Marriage*, FBR, 1:155.

69. The word σύντεκνος is used to describe several types of family relationships. Here the word means a godfather in relation to the natural father of the child.

70. *Prochiron auctum* 8.79, Zepos, 7:70; cf. Leo IV the Khazar, *Novel* 7, Rhalles and Potles, 5:241–47; Peter Chartophylax, *Canonical Answers*, Rhalles and Potles, 5:371.

71. John Pediasimos, *Treatise Concerning Marriage*, FBR, 1:156.

CONCERNING A TUTOR AND MINORS<sup>72</sup>

Neither a tutor nor his son can marry a female orphan before the dissolution of the guardianship. The guardianship is dissolved during the thirtieth year. For the period of coming of age is twenty-five years, the interval of restitution is four years, and the obligation of guardianship is dissolved immediately at the beginning of the thirtieth year. And from that time, he has permission to be joined with the one formerly under his care, but before this in no wise are they to be married.<sup>73</sup>

72. In the *Alphabetical Collection*, guardianship appears to follow the same lines as found in the *Corpus Iuris Civilis*. There appear to be two main types of guardians: tutors (ἐπίτροπος) and curators (κουράτωρ). Persons who lacked legal capacity were placed under guardianship. Those who were incapable on account of youth were placed under a tutor. Others, those who were immature, incompetent, or in a state of lunacy, were under the authority of a curator.

Tutorship was exercised over orphaned males below the age of fourteen and females under twelve. A tutor could be appointed through the will of the deceased father or by the court. In lieu of these, the duty fell on the closest agnate. The tutor was concerned mainly with the management of the minor's property, for which he gave an account at the end of his guardianship. Up to the age of seven, which was considered the period of infancy, the child could perform no legal act. After infancy, a child could "acquire rights but he could not alienate them nor could he incur duties" (Barry Nicholas, *Roman Law* [Oxford: Clarendon Press, 1962], 93). This meant that any contract required the tutor's authority to assure the child fulfillment of any payment or incumbent duty.

Curatorship was exercised over persons who were beyond adolescence and under the age of twenty-five, regarded as the age of majority (τῆς ἐνηλικιώσεως). Curators like tutors had general authority over the minor's property. They also gave their authorization to contracts and other legal actions of the minor, which could otherwise not be considered as creating any obligation for the latter. There were two types of curators: general and special. Whereas the first had authority over the minor's property, the second was concerned only with a particular legal action of the minor. At the age of majority, the general curator was required to render accounts of his administration (λόγους τῆς διοικήσεως). At this time, the former minor could bring suit against either the curator or tutor for a restoration of the estate to its previous condition from any losses or harm suffered under their guardianship. This restoration was known as *restitutio in integrum* (ἀποκατάστασις). Early practice permitted such suits only during the year following majority, but this was later extended to four years. For additional information on curators and tutors, see the following: *Basilika* 37.5–12, Scheltema, A5:1663–81; *Nomokanon of Fourteen Titles* 13.2, Rhalles and Potles, 1:277; J. Zhishman, *Das Eherecht der Orientalischen Kirche* (Wien: Wilhelm Braumüller, 1864), 634–37, 643–44; Barry Nicholas, *Roman Law* (Oxford: Clarendon Press, 1962), 90–96; Charles Phoineas Sherman, *Roman Law in the Modern World* (3 vols.; Boston: The Boston Book Co., 1917), 2:100–16; W. W. Buckland, *A Text-Book of Roman Law from Augustus to Justinian* (Cambridge: University Press, 1921); Percy Elwood Corbett, *The Roman Law of Marriage* (Oxford: Clarendon Press, 1930) 44–51.

73. *Digest* 23.2.67 § 2.4; *Epanagoge* 17.24, Zepos, 2:280; *Prochiron* 7.21, Zepos, 2:138; *Basilika* 28.5.11 (10), Scheltema, A4:1347; John Pediasimos, *Treatise Concerning Marriage*, FBR, 1:156.

The mother of a female under guardianship can be married to her mother's tutor even before the dissolution.<sup>74</sup>

However, although domestic servants possess the rank of freedmen, after the death of their masters, they are not able to marry the latter's wives, in order not to give one an insinuation of previous adultery; notwithstanding that they are not slaves nor ever were.<sup>75</sup>

Neither an actor nor a common stage-player nor the son of one is able to marry the daughter of a senator.<sup>76</sup>

## LAW

Thus, the law states that it is necessary to seek not only what is permitted in marriages, but also what is seemly.<sup>77</sup>

It is necessary to also seek degrees and unimpeded unions beyond the seventh for those related by blood, holy baptism, and adoption. In the cases of those related by affinity or trilineage, one should be aware of what is distinctly impeded or possesses a confusion of kindred names. And in cases of those without kinship, one must maintain what is seemly.<sup>78</sup>

## LAWS

Therefore, the woman that married illegally is able to dissolve the marriage, and to be married afterward to another.<sup>79</sup>

Children who are born from a marriage that has been forbidden neither are worthy of the name of bastards, nor do they inherit property from their own father.<sup>80</sup>

He who has intercourse with a freedwoman that is not a prostitute does not appear to have a concubine, but a wife.<sup>81</sup>

74. *Code* 5.6.2; *Epanagoge* 16.17, *Zepos*, 2:276; *Basilika* 28.4.40, Scheltema, A4:1334; the Blastares text in Rhalles and Potles at 6:139 reads, "can be married to her mother's tutor." However, this reading appears to be an error in light of the sources and most likely should be, "can be married to her daughter's tutor."
75. John Pediasimos, *Treatise Concerning Marriage*, FBR, 1:156–57.
76. *Digest* 23.2.42 § 1; *Basilika* 28.5.7 (6) § 1, Scheltema, A 4:1346; John Pediasimos, *Treatise Concerning Marriage*, FBR, 1:157.
77. *Digest* 23.2.42 pr.; *Epanagoge* 17.18, *Zepos*, 2:279; *Prochiron* 7.16, *Zepos*, 2:137; *Basilika* 28.5.7 (6) pr., Scheltema, A4:1346; John Pediasimos, *Treatise Concerning Marriage*, FBR, 1:157.
78. John Pediasimos, *Treatise Concerning Marriage*, FBR, 1:157.
79. Source unknown.
80. Justinian, *Novel* 89.1; Theodore Scholastikos, *Breviarum Novellarum Iustiniani*, *Novel* 74.11, in *Anekdotia* (ed. K. E. Zachariä von Lingenthal; Leipzig: 1843), 3.77; *Epitome legum* 24.33, *Zepos*, 4:420.
81. *Digest* 23.2.24.43 pr. §§ 1–9; *Basilika* 28.4.13, Scheltema, A4:1327; *Epanagoge aucta* 14.42, *Zepos*, 6:95.

A curator can join his own daughter in marriage to a male under his guardianship, but he cannot join his son to a female under guardianship without imperial permission because this appears dishonorable.<sup>82</sup>

Neither the father of a tutor nor his codependent brother are able to marry the female orphan.<sup>83</sup>

Widows are forbidden to marry during the year of mourning unless by permission of the emperor, but those not mourning, i.e., who are judged to be in purity, are not impeded.<sup>84</sup>

She who is pregnant while mourning her husband is still impeded from entering into a marriage.<sup>85</sup> However, the widow that gives birth during the mourning year is not impeded from marrying.<sup>86</sup> For the mourning period was decreed for two reasons, in order that there be no confusion concerning parenthood, and on account of respect that should be given to the husbands. On the one hand, she is released from these things by childbirth. But on the other hand, she still does not marry because of the honor and reverence that should be given to the husband. However, wives of those who were not worthy of being mourned (by happening to be implicated in public accusations), after the birth are not impeded from marrying, even during the mourning period.<sup>87</sup>

The woman that marries a second time before the end of the mourning period is infamous. She gains nothing from her first marriage and is able to give nothing more than a third part of her property to the second husband, when she clearly does not have children.<sup>88</sup>

If ever a wife would give birth to a child about eleven months after the death of her husband, fornication has taken place, and she is subject to the same penalties as one who marries a second

82. *Code* 5.6.5; *Basilika* 28.4.42, Scheltema, A4:1334; *Scholia Theodori ad Basilika* 28.4.42, Scheltema, B5:1840.

83. *Digest* 23.2.67 § 2; *Epanagoge* 17.24, Zepos, 2:280; *Prochiron* 7.21, Zepos, 2:138; *Basilika* 28.5.11 (10), Scheltema, A4:1347; *Synopsis Basilicorum* Γ. 2.11, Zepos, 5:139; *Epitome legum* 22.26, Zepos, 4:408.

84. *Digest* 3.2.10; *Epanagoge* 17.26, Zepos, 2:280; *Prochiron* 7.26, Zepos, 2:139; *Basilika* 28.5.13 (12), Scheltema, A4:1347.

85. *Epanagoge* 17.26, Zepos, 2:280; *Prochiron* 7.25, Zepos, 2:139; *Peira* 49.23, Zepos, 4:203.

86. *Digest* 3.2.11 §2; *Prochiron* 7.26, Zepos, 2:139; *Basilika* 28.5.13 (12), Scheltema, A4:1347; *Basilika* 21.2.11 §4, Scheltema, A3:1035; *Peira* 49.23, Zepos, 4:203.

87. *Digest* 3.2.11 § 1; *Peira* 49.23, Zepos, 4:203.

88. Justinian, *Novel* 22.22; *Epanagoge* 19.6, Zepos, 2:288; *Prochiron* 6.4, Zepos, 2:131; *Basilika* 28.14.1, Scheltema, A4:1413–14; *Scholia Theodori ad Basilika* 28.14.1, Scheltema, B5:1968.



time during the mourning period. Namely, she is deprived of her dowry and all her deceased husband's property.<sup>89</sup>

**CHAPTER 9:  
CONCERNING THOSE WHO DESPISE LEGAL MARRIAGES,  
WINE, MEATS, AND OTHER THINGS**

**APOSTLES 51**

The fifty-first canon of the Holy Apostles states,

A bishop or presbyter or another of the clergy who abstains from marriage, meat, and wine, not on account of asceticism and temperance, but as from abominations, forgetting that God made humanity male and female and that all things are very good, and blaspheming he slanders God's creation, either let him correct himself or be defrocked and separated most far from the Church, because he is firmly established against these correct dogmas. Indeed nothing made by God is evil, but the abuse of these things is harmful. If these were causes of evil, they would not have been created by God. Therefore, he that slanders God's creation defames the Creator.

**GANGRA 1, 4, 14, 9<sup>90</sup>**

The first canon of Gangra gives over to anathema the one who believes that lawful marriage is unclean and who abominates a

89. Justinian, *Novel* 39.2; *Basilika* 28.15.2, Scheltema, A4:1441; *Scholia Theodori ad Basilika* 28.15.2, Scheltema, B5:1984; *Ecloga ad Prochiron mutata* 8.21, Zepos, 6:248.
90. Blastares uses a numbering for the canons of Gangra that differs from most modern editions, as exemplified by Joannou, 85–99. A survey of the hieromonk's work reveals the following (canons not listed are not cited in the *Alphabetical Collection*):

Blastares	Joannou
1 (Rhalles and Potles, 6:142)	1 (89)
2 (Rhalles and Potles, 6:144)	2 (90)
4 (Rhalles and Potles, 6:142)	4 (91)
5 (Rhalles and Potles, 6:144)	5 (91)
6 (Rhalles and Potles, 6:455)	6 (91–92)
7 (Rhalles and Potles, 6:319)	7 (92)
9 (Rhalles and Potles, 6:142)	9 (93)
10 (Rhalles and Potles, 6:144)	12 (94)
13 (Rhalles and Potles, 6:197), (Rhalles and Potles, 6:388)	13, 15 (94–95)

decent and chaste woman that has relations with her husband on account of her intercourse with her spouse, as if therefore she would not be able to attain the kingdom of heaven. Certainly the Apostle states, "Marriage is honorable, and the marriage bed is undefiled,"<sup>91</sup> and also, "In later times some will depart from the faith in the hypocrisy of liars whose own consciences have been branded, who forbid marriage and urge abstinence from foods which God created for partaking."<sup>92</sup>

The fourth canon also threatens this punishment to him that decides and maintains not to take part in the Sacred Liturgy that is celebrated by a married presbyter, so as to abominate honorable marriage.

The fifty-second canon subjects to this anathema the woman who leaves her husband because she believes that marriage is abominable.<sup>93</sup> For surely the Apostle states, "Do not refuse one another unless it occurs by agreement,"<sup>94</sup> and again, "The wife does not exercise authority over her own body, but her husband does."<sup>95</sup> However, if she would choose departure from her husband out of a longing for the monastic life, this is blameless.

The ninth canon imposes this penalty on one that remains a virgin and withdraws from the world on account of abominating marriage, and not because of the beauty and holiness of virginity.

### APOSTLES 53

The fifty-third canon of the Holy Apostles states,

On feast days, for example, on Saturday and Sunday, or any others, one should not abstain from wine or meat as being abhorrent. The man that thinks and acts in this fashion, because he has branded his own conscience and

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52 [14] (Rhalles and Potles, 6:142)	14 (95)
14 (Rhalles and Potles, 6:389)	16 (96)
15 (Rhalles and Potles, 6:390-91)	17 (96)
16 (Rhalles and Potles, 6:347)	18 (96)
18 (Rhalles and Potles, 6:399)	19 (97)
20 (Rhalles and Potles, 6:144)	20 (97)

In his introduction to the *Alphabetical Collection*, Blastares states that there are only nineteen canons of the Council in Gangra (Rhalles and Potles, 6:15). When these canons are cited by the hieromonk, the variations in numbering will be noted.

91. Heb 13:4.

92. 1 Tim 4:1-3.

93. This actually refers to the fourteenth canon. A fifty-second canon does not exist for Gangra.

94. 1 Cor 7:5.

95. 1 Cor 7:4.

has become a source of scandal to many, if he is of the clergy, let him be defrocked, and if of the laity, let him be excommunicated. If perchance one abstains equally on other days, in determined periods of days, even if on Saturday and Sunday, he can observe the abstinence.

#### ANCYRA 14

The fourteenth canon of Ancyra recommends to those that abstain from meat on account of asceticism, only to taste it in the synaxes, and then, if they would wish, to not accept their meat, but to not reject partaking of garden vegetables that are boiled together with the meat because they would remove every pretext of the scandal of those that believe in abstaining from such things on account of despising them. It is especially fitting for them to eat meat during those days when some heretics have been accustomed to fast from these foods, as they would appear to not agree with heretical thought, especially if they happen to live in a city that suffers to a great extent from such heretics. If clergy do not obey the canon, they are stripped of the priesthood, and if laity, excommunicated.

Latin monks who abstain from meats, but who indiscriminately eat meat with vegetables, do not seem to me by these things to take an interest in the present canon. For they wisely do this not in order to remove scandal, but to fill the stomach.

#### BASIL 28

St. Basil the Great in canon twenty-eight deems it ludicrous for anyone to vow abstinence from pork. For which reason he also commands that this vow be rejected, that the consumption of meats is neither good nor bad (for no creation of God that is received with thanksgiving is to be rejected),<sup>96</sup> and that henceforth ignorant vows are to be abstained from as absurd.

#### FROM HIS LETTERS<sup>97</sup>

And in one of his epistles to the Holy Amphilochios, he states,

And to the clever Encratites, let this be said for an answer to their haughty question, why we do not also eat everything; that it is not astonishing if we fast from some things, because we also abhor our excretions.

96. 1 Tim 4:4.

97. St. Basil, *Letter* 236.

While according to moral value meat differs in nothing from garden vegetables, yet according to the distinction of what is beneficial, just as in the case of vegetables, we separate the harmful from the useful. Although hemlock is a vegetable, just as vulture flesh is a meat, still no one in his right mind would either eat henbane or feed on vulture, unless reduced by great need. Consequently, the one that eats does not act lawlessly.

GANGRA 2, 10, 5, 20

The second canon of the Council in Gangra decrees an anathema on him who condemns a person that with piety and faith partakes of meat that is bloodless, strangled, and sacrificed to idols, as though by partaking of these meats, one had no hope of salvation.

The tenth canon gives over to anathema the man who puts on garments, and abhors those clothed according to common use, or those clad with piety in silk and not through foolish ostentation and pride.<sup>98</sup>

The fifth canon applies this penalty to the one that regards as abhorrent the house of God and the synaxes in it. The blessed Paul commands us to pray in every place, but not so as to be disdainful of the synaxes and not enter the temples.

The twentieth canon condemns with anathema those who by prideful thought abhor the synaxes and Liturgies that are celebrated where relics of martyrs have been treasured.<sup>99</sup> See also the sixteenth canon of this Council in chapter three of Letter A.

98. The canon appears to be variously numbered as 10 and 12.

99. Blastares stated in his introduction to the *Alphabetical Collection* that there were only nineteen canons of this council (Rhalles and Potles, 6:15).

## Letter Γ

### **CHAPTER 1: CONCERNING MARRIAGE DEGREES**

See the eighth chapter of Letter B.

### **CHAPTER 2: CONCERNING PERMITTED AND PROHIBITED MARRIAGES**

#### APOSTLES 26, SIXTH COUNCIL 6, CARTHAGE 16

The twenty-sixth canon of the Holy Apostles, the sixth of the Sixth Council, and the sixteenth of that in Carthage allow those enrolled in the clergy who already serve as readers and chanters to legally marry; but no longer after advancing into the rank of subdeacon, deacon, or presbyter. Thus, they immediately defrock those clergy that turn away toward marriage.

#### NEOCAESAREA 1

The first canon of the Council in Neocaesarea strips the presbyter of the priesthood who joins himself as though legally with a woman.

## SIXTH COUNCIL 13

The divine Fathers of the Sixth Council (who in their thirteenth canon refute the custom that is held in the Latin church, which requires faithful priests and deacons that are being ordained to completely abstain after ordination from the wives who were legally married to them prior to this) state, "We also desire that after ordination the marital relations of those who are worthy of the priesthood be strengthened, lest we unconsciously insult marriage, which was blessed by the presence of the Lord, and Who declared, 'What God joined, let no man put asunder,'<sup>100</sup> and truly even the Apostle said that marriage is honorable, and the marriage bed undefiled, as well as, 'Are you bound to a wife, do not seek a divorce.'"<sup>101</sup>

Accordingly, let the deacon, subdeacon, or presbyter who refrains from conjugal relations with his lawful wife be defrocked, unless for a specified period of time, when he would be about to handle the Holy Things, in order that the pure who approach the Pure One would not fail to obtain their petitions.

But also it seemed good to some of those who formed the First Council at Nicaea to introduce a law that bishops, presbyters, deacons, and subdeacons who were legally married before ordination not at all sleep with their wives. Nevertheless, Paphnoutios, who was a bishop of one of the cities in Thebes, a man who had been raised from childhood in a monastery, who was successful in every virtue, and who had above all become famous for chastity, not only this but who had also been adorned with the crown of confessor (for one of his eyes had been gouged out on account of his piety), spoke against those who had such an opinion, calling marriage honorable and intercourse with one's own wife chaste. He advised the council not to institute such a law, stating that chastity was difficult to bear for those who live in the world and that perhaps this would cause both husbands and their wives to not be chaste. According to the ancient tradition of the Church, celibates who partook of the priestly rank are no longer able to marry. However, they who were advanced into the priesthood after marriage, should not be separated from their wives. The council praised the divinely inspired man's advice, and legislated nothing concerning this matter, but left the matter to individual opinion and would not make use of compulsion. This Paphnoutios was so loved by God, that even wondrous signs occurred

100. Matt 19:6.

101. 1 Cor 7:27.

through him. The emperor Constantine honored the man exceedingly, summoned him to court frequently, and kissed him where the eye had been gouged out.

### ANCYRA

Pay no attention at all to the tenth canon of the Council in Ancyra, which states that the deacon is able to marry with the permission of his bishop even after ordination.

### LAW

The novel of Emperor Leo the Wise states that even if it was permitted by unwritten custom for those ordained to the priesthood to legally take wives within a ten-year deciding period after ordination, this custom ought not be kept because it has been prohibited by the canons.<sup>102</sup>

Let the one who is ordaining a celibate ask him if he is able to live chastely without a legal wife, and if he conforms to this, let him be ordained. Let him who allows a deacon to take a wife after ordination be expelled from the episcopacy. A presbyter, deacon, or subdeacon who marries after ordination is expelled from the clergy.<sup>103</sup>

It is permitted for clergy to have legal wives.<sup>104</sup>

Chanters and readers are able to marry legally. Subdeacons, deacons, and presbyters have been absolutely forbidden to marry. For this reason those of the latter who partake of marriage are deprived of the priesthood.<sup>105</sup>

### DEFINITION OF MARRIAGE

Marriage is a union of a man and woman and a consortium for an entire lifetime, a sharing of divine and human law, either through a blessing, or crowning, or contract. However, whatever was done contrary to these things is reckoned as not having been done.<sup>106</sup>

102. Leo VI, *Novel* 3, Noailles, 18–21; Balsamon's commentary on Ancyra 10, Rhalles and Potles, 3:41; the period of time in the *Novel* and as recorded by Balsamon is actually two years.

103. Justinian, *Novel* 123.14 § 1; *Basilika* 3.1.27, Scheltema, A1:92; *Nomokanon of Fourteen Titles* 9.29, Rhalles and Potles, 1:212.

104. *Prochiron* 5.1, Zepos, 2:128.

105. *Code* 1.3.44; Justinian, *Novel* 22.42; *Prochiron* 5.2, Zepos, 2:128; cf. *Basilika* 28.14.15, Scheltema, A4:1427–28.

106. *Code* 9.32.4; *Digest* 23.2.1; cf. *Institutes* 1.9.1; *Epanagoge* 16.1, Zepos, 2:274; *Prochiron* 4.1, Zepos, 2:124; *Basilika* 28.4.1, Scheltema, A4:1325; *Nomokanon of*

Romans form legitimate marriages between each other whenever they observe what is commanded by the laws concerning marriages. It is necessary for males to have reached puberty and for females to be capable of receiving a man, i.e., for males to be past their fourteenth year and for females to be more than twelve years old. Those who come together in marriage are either free agents or dependents, and we say the following things concerning them.<sup>107</sup>

Marriage does not take place if they who are being joined do not consent, even if it is consented to by those who exercise power over them.<sup>108</sup>

The husband and wife having intercourse with one another does not form the marriage, but their consent for marriage does.<sup>109</sup>

The independent son who finally reaches adulthood marries even without the father's consent.<sup>110</sup>

Mourning for ascendants does not hinder the marriages of the persons who are in mourning.<sup>111</sup>

Let him who lives in chastity not be compelled by his own father to enter into marriage, even if he is a dependent.<sup>112</sup>

Let no one be crowned secretly, but when many are present. Let the one who dares to do this be chastened with a punishment. It is also evident that the meet punishments exacted of a priest

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*Fourteen Titles* 12.13, Rhalles and Potles, 1:271; cf. Balsamon's commentary on Trullo 72, Rhalles and Potles, 2:472:

The civil law defines marriage as a sharing and consortium of both divine and human law. Accordingly therefore, the Holy Fathers determined that an Orthodox man is not legally joined to a heretical woman, or the contrariwise.

107. *Institutes* 1.10 pr.: *Epanagoge* 16.2, Zepos, 2:275; *Prochiron* 4.1–2, Zepos, 2:124–25; *Basilika* 28.4.50 (46), Scheltema, A4:1337–38.
108. *Digest* 23.2.2; *Epanagoge* 16.3, Zepos, 2:275; *Prochiron* 4.4, Zepos, 2:125; *Basilika* 28.4.2, Scheltema, A4:1325.
109. *Digest* 50.17.30; *Epanagoge* 16.12, Zepos, 2:275; *Prochiron* 4.17, Zepos, 2:126; *Basilika* 2.3.30, Scheltema, A1:51.
110. *Digest* 23.2.25; *Epanagoge* 16.4, Zepos, 2:275; *Prochiron* 4.12, Zepos, 2:125; *Basilika* 28.4.14, Scheltema, A4:1327.
111. *Digest* 3.2.11; *Epanagoge* 16.16, Zepos, 2:276; *Prochiron* 4.13, Zepos, 2:126; cf. *Basilika* 21.2.11, Scheltema, A3:1035.
112. *Prochiron* 4.22, Zepos, 2:126; *Epitome legum* 23.36, Zepos, 4:414; *Epanagoge aucta* 14.9, Zepos, 6:91; *Prochiron auctum* 4.45, Zepos, 7:30; for a discussion of *Prochiron* 4.22–27, see Nicolas Oikonomides, "Leo VI's Legislation of 907 forbidding Fourth Marriages. An Interpolation in the Procheiros Nomos (IV, 25–27)," *Dumbarton Oaks Papers* 30 (1976): 173–93, and the response by Andreas Schminck, *Studien zu mittelbyzantinischen Rechtsbüchern*, FBR, 13:87–89.



who meddles in such unseemly acts are according to the prescription of the ecclesiastical canons.<sup>113</sup>

The dumb, deaf, and blind are also able to marry, and are responsible for a dowry.<sup>114</sup>

**CHAPTER 3:  
CONCERNING THOSE WHO DESPISE LEGAL MARRIAGES**

See the ninth chapter of Letter B.

**CHAPTER 4:  
CONCERNING SECOND MARRIAGES, THIRD  
MARRIAGES, AND POLYGAMY OF MEN AND WOMEN,  
AND CONCERNING SECOND MARRIAGES OF PRIESTS**

**APOSTLES 17**

The seventeenth canon of the Holy Apostles states, "He who entered into a second marriage after baptism, or fell into fornication, cannot be a bishop, presbyter, deacon, or one of the sacerdotal list." For the Grace of the all-Holy Spirit, which through the mystery of divine baptism (and neither by rational thought nor apprehensible reason) cleanses the one who is baptized of every filth and which declares him capable of receiving Light, does not then impede him from being illuminated with the pure Light of the priesthood. Indeed, after the divine bath no further sacrifice for sins remains, so even priesthood can be bestowed.

**CONCERNING READERS**

Therefore, readers that marry a second time and maintain their rank act against the canons.

**BASIL 12**

Basil the Great makes mention of this canon in his twelfth canon, saying, "The canon entirely excludes digamists from service in the clergy," meaning indeed this canon.

113. *Prochiron* 4:27, *Zepos*, 2:128; *Epanagoge aucta* 14.29, *Zepos*, 6:94; *Ecloga ad Prochiron mutata* 4.10, *Zepos*, 6:239; *Prochiron auctum* 4:43, *Zepos*, 7:30.

114. *Digest* 23.3.73; *Basilika* 29.1.69, *Scheltema*, A4:1461; *Epitome legum* 27.39, *Zepos*, 4:444; *Epanagoge aucta* 16.84, *Zepos*, 6:111.

## APOSTLES 18

Apostolic Canon eighteen states, "One who takes a widow, or a woman that has been divorced by her own husband, or a prostitute, or a servant, or one of those in the theater that are not believed to be chaste by living in an unseemly manner, is not able to be a bishop or presbyter or anyone of the clergy."

## SIXTH COUNCIL 3

The third canon of the Sixth Council is in agreement with these two Apostolic Canons.

## LAWS

Let no one who marries a second time be ordained a presbyter or deacon. And let no one be ordained if he either lives with a woman that abandoned her own husband or if he has a concubine. But let him be ordained if he becomes the husband of one chaste and virgin woman.<sup>115</sup> However, if one of the clergy leads a married woman or concubine into his house openly or secretly, let him immediately lose the rank of priesthood and become a lay person.<sup>116</sup>

## NOVEL

The seventy-ninth novel of Emperor Leo the Wise orders digamist clergy neither to be deprived of their *schēma* nor to be outside the service of the altar. Thus, it states,

We do not accept the viewpoint of the ancient legislator, who desires that a presbyter, deacon, or subdeacon that joined himself with a woman after ordination to clerical rank be entirely deprived of such rank and be returned to the lay life. But we nullify this regulation and decree that exclusion pure and simple from the rank that they had before marriage, to be sufficient punishment for them. However, it is not illicit for them to partake of the clerical *schēma* and other ministry in the churches.<sup>117</sup>

115. 1 Tim 3:2.

116. Justinian, *Novel 6.5*; *Nomokanon of Fourteen Titles 9.29*, Rhalles and Potles, 1:211.

117. Leo VI, *Novel 79*, Noailles, 270–73; Balsamon's commentary on Trullo 6, Rhalles and Potles, 2:319; according to a 1375 manuscript, the following is added here:

## CONCERNING DIGAMIST LAITY

However, the divine Apostle Paul, who perceived the instability of nature, permitted young widows, if they wished, to enter upon marriages again. The divine Fathers, who were not ignorant concerning the arising of the fleshly spirit, did not deem it fitting to impede those men who choose to marry a second time. However, they did not allow them to have second marriages without criticism.

## LAODICEA 1

Thus, the first canon of the Council in Laodicea states, "Let those who legally contract second marriages, have the benefit of Communion according to indulgence (κατὰ συγγνώμην) after spending a little time devoting themselves to prayer and fasting. However, if they engaged in concealed intercourse before legal marriage is celebrated, let them be penanced as ones who have committed fornication."

## BASIL 4

Basil the Great in his fourth canon states, "Some exclude the digamist from Communion for one year, others, for two years."

CONCERNING WOMEN WHO ENTER INTO A  
SECOND MARRIAGE

In the forty-first canon, he states,

If the widowed woman is deprived of the care of her parents and enters into a second marriage voluntarily, the marriage has not been forbidden. For the Apostle says, "If the husband dies, she is free to marry whom she wishes, only in the Lord,"<sup>118</sup> that is to say, to be joined to a believing husband. However, if the parents are living and the daughter is their dependent, and they do not consent, the parents can break up the marital union.

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"of those who have entered the clergy celibate that wish to marry, we permit only readers and chanters"; see Rhalles and Potles, 6:156.

118. 1 Cor 7:39.

## LAWS

The law states, "Let the independent woman who is less than twenty-five years old and who is about to marry a second time marry with the consent of her father."<sup>119</sup>

The widowed woman is compelled to wait the mourning year because of the confusion of parentage, although this does not occur in the case of the husband. She that marries before the year has been completed after the husband's death is to be declared infamous and cannot give more than a third of her property to the second husband, or leave more than this to him in a will, when she clearly does not have children. She also will receive nothing from an inheritance, legacy, or *mortis causa*, i.e., a concluding gift; but heirs of the person who bequeaths receive these things. Even if the first husband left something to her, ten persons receive the inheritance according to degree, i.e., ascendants, descendants, and collateral relations, up to the second degree. However, if intestate, an heir is recognized among her relations up to the third degree. In addition, she is also deprived of all honor that came to her from the husband either on account of the betrothal or according to the wish of the deceased.<sup>120</sup>

## LAW

However, a woman is able to introduce a second marriage for herself by permission of the emperor. She that gives birth during the mourning year can be married immediately.<sup>121</sup> See also matters concerning this in chapter eight of Letter B.

No one under the commonwealth of the Romans can have two wives at the same time.<sup>122</sup>

Let him that has two wives at the same time be beaten, after the adventitious woman is expelled along with the children born from her.<sup>123</sup>

119. *Code* 5.4.18; *Epanagoge* 16.14, *Zepos*, 2:275; *Prochiron* 4.19, *Zepos*, 2:126; *Basilika* 28.4.34, *Scheltema*, A4:1332.

120. *Code* 5.9.1; *Nomokanon of Fourteen Titles* 13.2, *Rhalles and Potles*, 1:276.

121. *Digest* 3.2.10–11; *Basilika* 21.2.10–11, *Scheltema*, A3:1035; *Nomokanon of Fourteen Titles* 13.2, *Rhalles and Potles*, 1:277.

122. *Code* 5.5.2; *Basilika* 28.5.35, *Scheltema*, A4:1352; *Nomokanon of Fourteen Titles* 13.2, *Rhalles and Potles*, 1:277.

123. *Ecloga legum* 17.35, *FBR*, 10:238; *Epanagoge* 40.63, *Zepos*, 2:365; *Ecloga aucta* 17.13, *FBR*, 3:71; *Ecloga privata aucta* 17.31, *Zepos*, 6:44.

## CONCERNING TRIGAMISTS

## BASIL 4, 50

Basil the Great in his fourth canon states,

We hold the custom of five years' excommunication for trigamists when the marriage is clearly not dissolved. However, we no longer call such an affair marriage, but polygamy, or rather fornication that has been tempered, i.e., not dissolved, but reduced; limited to one woman. Wherefore the Lord also said to the Samaritan woman, who had five husbands in turn, "He whom now you have is not your husband,"<sup>124</sup> because they that go beyond the limit of digamy are no longer worthy to be called by the name of husband or wife. However, he states that it is not necessary to altogether debar them from the Church, but only for their punishment to be spent in the places of the hearers and of those that stand, not however, in that of the weepers.

But also, again in canon fifty, he states, "There is clearly no ecclesiastical law of third marriage. Nevertheless, we view such things as defilements of the Church. However, we do not submit them to public condemnations because they are more preferable than unrestrained fornication." Thus, we do not condemn the practice so as to also dissolve them, but according to the *Tomos of Union* which will be discussed shortly, by its decision and command, we accept these marriages.

GREGORY THE THEOLOGIAN<sup>125</sup>

Gregory the Great, who is surnamed the Theologian, stated, "The first marriage is legal, the second is a concession, the third is a transgression of law, and one beyond this, the life of a swine, which does not even have many examples of its evil."<sup>126</sup>

CONCERNING THE *TOMOS OF UNION*

At this time, three marriages were recognized by the ancient laws. Emperor Leo the Wise, who entered into a fourth marriage, was

124. John 4:18.

125. St. Gregory the Theologian (ca. 329–390).

126. St. Gregory the Theologian, *Homily 37.8* (ed. Claudio Moreschini and trans. Paul Gallay); Grégoire de Nazianze, *Discours 32–37*, *Sources Chrétiennes* 318 (Paris: Les Éditions du Cerf, 1985), 287.

subjected to anathema by Patriarch Nicholas,<sup>127</sup> who required the emperor to quit himself of this union. Because the patriarch was absolutely inflexible, the emperor expelled Nicholas from the Church, and appointed as patriarch Euthymios Synkellos, a holy man.<sup>128</sup> However, Euthymios, with a majority of hierarchs, contending not only tetragamy, but also trigamy to be illegal, with all zeal hindered the emperor who wished to decree that marriage be extended as far as the fourth for those who so desired. On account of this, a schism arose in the Church, which also sustained the dispute over the throne between Leo VI's son Constantine Porphyrogennetos<sup>129</sup> and the latter's father-in-law Romanos.<sup>130</sup> At this time, in the year 6428,<sup>131</sup> the so-called *Tomos of Union* was brought forth, which determined when it is fitting to concede a third marriage for some, excellently places reins on the shameless desires of the passions, and is annually read during July on the *ambon* (ἄμβωνος).<sup>132</sup> Thus, it states the following toward the end:

Men who have reached forty years of age, and who cast themselves into a third marriage, inasmuch as they are defilements of the Church, we rule that they are to be excommunicated for five years, and after this expires, they are to approach for Communion once a year, on the venerable day of the saving Pascha, after purifying themselves as much as possible by the fast for Pascha. The priest who dares, contrary to the decreed decision, to deem some of these worthy of Holy Communion, will be risking his own rank. We command these things when there are no children from previous marriages. But if in fact there are children, the third marriage will be forbidden. But if a man is thirty and has received a succession of offspring from previous marriages, and nevertheless now joins himself to a third woman on account of the licentiousness of fleshly desire, let him be excommunicated for four years. Afterward, let him partake of Communion three times a

127. Nicholas I Mystikos, Patriarch of Constantinople (901–907; 912–925).

128. Euthymios I, Patriarch of Constantinople (907–912).

129. Constantine VII Porphyrogennetos, Emperor (945–959).

130. Romanos I Lecapenos, Emperor (920–944).

131. The year 6428 by Byzantine reckoning from the creation of the world is equivalent to 920 AD.

132. An *ambon* (ἄμβων) was a liturgical platform used for various purposes, including as a pulpit; for a summary, see Alexander P. Kazhdan et al., eds., *The Oxford Dictionary of Byzantium* (3 vols.; Oxford: Oxford University Press, 1991), 1:75–76.

year: on the Resurrection Day of Pascha, the Dormition of the undefiled Theotokos, and the feast day of the Lord's Nativity, because the fasts before these days are believed to purify most of the stain absorbed by him. However, if he is childless, this man is worthy of pardon if he chooses a third marriage on account of a desire to procreate children; and, excluded from Communion for three years, he should be treated with the customary penalty.<sup>133</sup>

## CONCERNING POLYGAMY

### NEOCAESAREA 3

The third canon of the Council in Neocaesarea states, "Concerning those who fall into marriages, so as to even advance beyond trigamy, the appointed time is clear," even though this is absolutely unclear, because none of the ancient authorities give an explanation. The canon also states, "the faith and manner of life of the repentant are able to shorten the time."

### BASIL 80

Basil, wise in all things, in his eightieth canon states, "The Fathers veiled polygamy with the obscurity of silence, as bestial and contrary to a human way of life. It seems to us (i.e., it appears good and is judged), to punish this more than fornication." Polygamy is not indiscriminate intercourse with women, but a man marrying many women, even if not all at once. For marriage is not only a matter of lying with a woman (according to vulgar speech), but the union of man and woman, a consortium for an entire lifetime, a sharing of both divine and human law, as the laws command. Thus, it is not only known by the union, but also from the disposition (διάθεσις) of the ones who are contracting. Polygamy is said to have been passed over by the Fathers in silence because, although trigamy is recognized by the law, polygamy is forbidden by the laws and canons. For every contract that exceeds the boundaries is accurately termed polygamy and has very suitably

133. Although the *Tomos of Union* is cited as legislating that childless men under forty are "excluded from communion for three years" and "treated with the customary penalty," the document actually states that "they shall be treated only with the penalty maintained from the beginning and up to the present time" (Zepos, 1:196); for a text of the *Tomos*, see Zepos, 1:193–97; cf. Balsamon's commentary on Basil 4, Rhalles and Potles, 4:103–107.

manifested worse things than fornication. For the one who fornicates only wrongs himself, willingly throwing himself into the pit of licentiousness. However, he that contracts perhaps a fourth or fifth marriage for himself exults over what the canons forbid and wrongs his legitimate children by sowing illegitimate ones among the latter. Wherefore, even after departure from wrongdoing and genuine confession, he is deemed culpable of more than fornication. For Basil extends the one penance to a seven-year period and the other to an eight-year, if you will pay close attention to the decrees of the the saint. For if, when referring only to two of the places of repentance, he decreed four years to be spent in them, I also would suppose that in the case of the other two places, which he passed over on account of brevity, as is shown, it is necessary to spend four additional years before partaking of the Hallowed Things.

#### LAW

The law states, "Therefore, let this be manifest to all, that if one would dare to enter into a fourth marriage, which is not a marriage, not only will such a reputed marriage be considered to be nothing, but neither will the children born of it be reckoned as legitimate; and such ones who have separated themselves from one another, shall be subject to the penalties of those who defiled themselves in fornication."<sup>134</sup>

#### **CHAPTER 5: CONCERNING THE WIFE THAT WISHES TO ENTER INTO A SECOND MARRIAGE WHOSE HUSBAND DISAPPEARED ON A LONG VOYAGE OR CAMPAIGN**

#### BASIL 31

The thirty-first canon of St. Basil the Great states, "She whose husband departed and was lost, that does not wait for his return, nor on the other hand accurately learns from what was determined about him if he truly died, and that weds herself to another, is subject to the penalty of adultery."

134. *Prochiron* 4.25, Zepos, 2:127–28; *Epitome legum* 23.40, Zepos, 4:415; *Epanagoge aucta* 14.21, Zepos, 6:92–93; *Ecloga ad Prochiron mutata* 2.27, Zepos, 6:235; *Prochiron auctum* 4.54, Zepos, 7:32.



## BASIL 36

The thirty-sixth canon states, "Even the wives of soldiers who are missing for a long time fall into the same crime of adultery. However, they have some excuse, for in the course of time soldiers are suspected of dying, inasmuch as they are faced with wars, dangers, and slaughters."

## SIXTH COUNCIL 93

The Sixth Council, which received these two canons of Basil, created its ninety-third canon, which uses the same words, and adds that the soldier who returns from a long journey, if he would wish to, shall obtain possession of his own wife. However, pardon is given to both her and the man to whom she was legally united. For she is not blamed because of her ignorance, and she that did not wait for the return is not unpardonable by the soldier. But if the wife does not wish the companionship of the returning soldier, neither is she permitted to live with the second man, although she wishes this. For if after the first one's return although it is not legal for her, she actually wishes to still cohabit with the second man, she will be punished as an adulteress and the marriage will be immediately dissolved. For the Fathers say that the women who are worthy of pardon are those that willingly depart from their second bed-fellows, that do not approve sin out of ignorance, and that are not contrary, even preferring adultery.

## LAWS

If a soldier carries on an expedition, that is to say, in public service, however many years, let his wife wait for him, even if she did not receive letters from him. Although she might be convinced that he died, let her thus not marry immediately, unless she first asks the *chartoularioi* if her husband in very truth died, and these, with the Holy Gospels set before them, will by oath confirm his death.<sup>135</sup> But even so, let her in turn wait a year, and then let her legally marry. However, if she would wed contrary to this ruling, both she and the one that married her, should be regarded as adulterers. And if the ones that made the judgement are shown to be liars, they are to be dismissed from military ser-

135. In this context, *chartoularioi* (χαρτουλάριοι) were record keepers for the army unit.

vice, and the returning soldier has permission to take his own spouse if he should wish.<sup>136</sup>

Concerning prisoners, the novel of Leo the Wise decrees that a marriage should not be dissolved on grounds of internment, nor is it permitted for the party that remains free to turn away toward another marriage. Although the latter might be joined to another, the party that returns from internment has permission to recall his or her own member and to sunder the second marriage.<sup>137</sup>

**CHAPTER 6:  
THAT THE OFFICIATING PRIEST MUST NOT FEAST  
WITH THE ONE MARRYING A SECOND TIME**

NEOCAESAREA 7

The seventh canon of the Council in Neocaesarea did not deem fit that a priest should be a guest at the wedding of those marrying for a second time. For how can one that is about to censure and prohibit someone from Holy Communion for a year, under these circumstances partake of a banquet with him, and by this appear to assist with what has taken place? Nevertheless, after the wedding, he shall not be forbidden to share a meal with him.

**CHAPTER 7:  
THAT CHRISTIANS WHO ATTEND A WEDDING  
MUST NOT ENGAGE IN FOOLISH THINGS**

LAODICEA 53

The fifty-third canon of the Council in Laodicea urges Christians who attend a wedding to uphold fitting piety for themselves and not turn their attention to dancing or foolish things. At present, the concerns of this canon have been neglected. See also canon fifty-four of this Council and canon twenty-four of the Sixth Council in the first chapter of Letter Θ.

136. Justinian, *Novel* 117.11; *Prochiron* 11.19–20, Zepos, 2:149–50; *Epanagoge* 21.6, Zepos, 2:307; *Basilika* 28.7.3, Scheltema, A4:1361–62; cf. *Nomokanon of Fourteen Titles* 13.3, Rhalles and Potles, 1:293–94.

137. Leo VI, *Novel* 33, Noailles, 130–37; Balsamon's commentary on Trullo 93, Rhalles and Potles, 2:526.

**CHAPTER 8:  
CONCERNING VIRGIN WOMEN THAT MARRY  
CONTRARY TO THE WILL OF THEIR OWN PARENTS**

**BASIL 38, 40, 42**

The thirty-eighth canon of Basil the Great condemns as fornicators dependent daughters who have given themselves in communion of marriage to lovers. Nevertheless, he states that if the parents were to accept their daughter's cohabitation with her lover and corrupter, then it appears that the illegality at the beginning is remedied by the later approval of the parents. All the same, on account of the earlier wrongdoing, such women will be worthy of Communion after three years. However, at that time, the marriage was established by consent alone. It would not constitute a marriage for us without a benediction (ἱερολογία).

In addition, both canon forty and forty-two decide that the female slave who marries without the permission of her own master has nothing better than fornication, because contracts of dependents have no validity. In this way also, marriages contrary to the master's will are considered fornications. However, if after such a marriage takes place, as soon as her master agrees to the marriage or grants her freedom, the marriage will be free from censure, but the earlier sin, which was fornication, will be justly punished. A female slave who is joined to any freeman whatsoever, after her master knows and does not object, will not be considered a harlot. For his silence by necessity bestows freedom and innocence to her.

**LAW**

A female or male dependent cannot legally marry if the one that has power over them does not consent, except if the father delayed in joining to a husband his daughter who had become twenty-five years old. For in that case, it has not been forbidden for a single woman to be joined with a freeman.<sup>138</sup> See also the thirtieth chapter of the present letter.

138. *Nomokanon of Fourteen Titles* 13.9, Rhalles and Potles, 1:310; cf. *Digest* 23.2.2; *Basilika* 28.4.2, Scheltema, A4:1325; Justinian, *Novel* 115.3; *Basilika* 35.8.41, Scheltema, A5:1582–96.

**CHAPTER 9:  
CONCERNING UNLAWFUL MARRIAGES AND  
INCESTUOUS RELATIONSHIPS**

Of the marriages that do not take place legally, some are called incestuous/illicit (ἀθέμιτος), as for example with relatives or heretics; others, unlawful (παρانونόμος), as for example with a female under guardianship; and others, condemned (κατάκριτος), as with a woman who has been dedicated to God. The divine canons rule that only these are sundered; and the civil laws decree that the contractors, who are even unworthy of being flogged, are banished and exiled. In Latin, an unlawful (παρانونόμος) marriage is called *nefarius*, a condemned (κατάκριτος) one, *damnatus*, and an incestuous/illicit (ἀθέμιτος) one, *incestus*.

**CONCERNING CLERICS WHO HAVE  
MARRIED INCESTUOUSLY**

**APOSTLES 19**

Accordingly, the nineteenth canon of the Holy Apostles states, "He who takes two sisters or a niece cannot be a cleric." For every incestuous marriage either by consanguinity or affinity, is sundered; and the one who is caught in this is not only debarred from the clergy, but also subject to punishments.

**BASIL 27**

Indeed, the twenty-seventh canon of Basil the Great deems that the priest who is involved in an illicit marriage through ignorance (who becomes intimate with a woman that happens to be related by blood, or a nun that renounced the sacred *schēma*, or a woman that was under his father's guardianship) is worthy to retain his seat with the presbyters, but is to refrain from the rest of the functions of the priesthood, with tears repenting in everything toward God and man: toward the former, because He alone is able to forgive sins, and toward the latter, in order that they would beg forgiveness for him from the Lord. The canon states that it befits the one that should heal his own wounds neither to bless privately nor in public. Because blessing imparts spiritual and sanctifying grace, how would he be able to bestow to another those things in which he has no share on account of his transgression, even if it occurred through ignorance? If this is true, then he could hardly distribute the Lord's

Body. He is not to be punished, but should still retain his seat, because a pardon suffices for him on account of his ignorance.

#### SIXTH COUNCIL 26

The divine Fathers of the Sixth Council who deemed that it was in the highest order of good for this canon to be mentioned, utilized its very wording in creating their twenty-seventh canon, adding only that such an unlawful marriage will obviously be dissolved, and the husband will no longer have carnal relations (οὐδαμῶς ὁ ἀνὴρ μετουσίαν ἔξει) with her on account of whom he was deprived of priestly functions. If the unlawful cohabitation is not sundered, neither will he have a seat, but he will even be driven out of the Church with the woman who lawlessly united with him, and the marriage will be dissolved by the authority of the archons (ἀρχόντων). For the man who continues in a sin after recognizing it as such will be punished simply as an incestuous person.

#### CONCERNING LAITY WHO MARRY INCESTUOUSLY

##### BASIL'S LETTER TO DIODOROS AND CANON 23

The letter of Basil the Great to Diodoros, Bishop of Tarsus, has been filled full of all wisdom, and has been adorned with rhetorical persuasiveness.<sup>139</sup> It discredits nothing whatsoever that by God's Grace presently occurs to a Christian man. For Diodoros, who was questioned by someone if after his wife's death he could take her sister in marriage, replied in writing that this was not impeded. Diodoros's written answer is presented by the great father Basil, who forbids such a marriage. The saint, who suffered greatly on account of this answer, composed this letter, which is full of much profit, not only for this one case, but for all who attempt an unlawful marriage. Indeed, making use of the general term of impurity, he included all these in a few words.

He states in canon twenty-three, "You will know very well how we judged concerning those who marry two sisters, from the letter which has been published by us, a copy of which has been sent to your piety," certainly speaking here of this letter to Diodoros, which he had also sent to Amphilochios.<sup>140</sup> He states that a place of repentance will not be given to one who took his own brother's wife in marriage, before he departs from her.

139. St. Basil, *Letter 160*.

140. St. Basil, *Letter 199*.

## SIXTH COUNCIL 54

The fifty-fourth canon of the Sixth Council made mention of this letter and states,

If the saint enumerated a small number of forbidden marriages, he passed over the greater number of these things in silence, so that he would not sully his speech with profane names, indicating unlawful marriages as a whole only by the general category of impurity. But we decree that he who joins himself to his own female cousin, or a father and son with a mother and daughter, or a father and son with two sisters, or two brothers with two sisters, will fall under the canon of seven years' penance after first separating themselves from the unlawful cohabitation.

## BASIL 67, 68, 75, 76, 78, 79

The sixty-seventh canon of Basil the Great again excludes from Communion for twenty years, as also in the case of murder, a brother and sister who engage in intercourse.

The sixty-eighth canon states, "The union of forbidden kindred in marriage, if it was discovered, shall receive the penalties of adulterers," which is the deprivation of Communion for fifteen years after the marriage is sundered.

The seventy-fifth canon states, "Let him who pollutes himself with his half-sister, on his father's or mother's side, be expelled from the house of prayer until he would refrain from incestuous and unlawful intercourse. Let him who abstains fittingly be worthy of Communion after twelve years."

The seventy-sixth canon states, "Let the same decision also apply concerning those who take their daughters-in-law in marriage."

The seventy-eighth canon, "Those who take two sisters in cohabitation, even if at different times, after the incestuous marriage is sundered are liable to the sentence of adultery."

The seventy-ninth canon, "And those who lust after their mothers-in-law are subject to the same canon as those who defile themselves with their own sisters."

## NEOCAESAREA 2

The second canon of the Council in Neocaesarea commands that the woman who weds herself to two brothers, who clearly is not

persuaded to dissolve the marriage, is to be expelled from the Church until her death. However, if the woman falls ill with a life-threatening disease and declares that after recovering from it, she will dissolve the marriage, let her be received in penance. However, if it happens that the woman or even the husband dies still entangled in such lawlessness, repentance will be difficult for the survivor. For it could be argued that he would not depart from sin if the person who died was still alive.

#### ANCYRA 25

The twenty-fifth canon of the Council in Ancyra has in particular decreed concerning a certain one who was engaged to a young woman, but who committed *stuprum* with his fiancée's sister and had made her pregnant. Indeed, the Fathers decided that those who were aware of these things were not to receive Communion for ten years. The ones who were aware are confederates, unless they simply had knowledge and were not able to prevent the events. For in the case of incestuous acts, the accomplices are not punished less than the authors.

#### TIMOTHY 11

The eleventh canon of Timothy of Alexandria commands clerics that are invited to a wedding for prayer and Oblation not to go if they learned that the marriage is unlawful. Clerics must not marry with a benediction the ones that choose to wed in this fashion, lest by doing so, they will participate in sins belonging to others. See also, "Concerning him who commits *stuprum* with his own mother-in-law" in the fifteenth chapter of the present letter.

#### LAWS

An incestuous marriage is not confirmed. On account of this, if it might be dissolved before an accusation is made, the penalty is remitted.<sup>141</sup>

141. *Digest* 48.5.39 § 6; *Basilika* 60.37.38, Scheltema, A8:2985–86; *Peira* 49.14, Zepos, 4:201; Balsamon's commentary on Trullo 26, Rhalles and Potles, 2:363; *Prochiron auctum* 5.2, Zepos, 7:36.

In the case of an incestuous marriage that occurred through ignorance, the Church and the correction of the sin allow pardon, especially if an accusation has not yet been brought.<sup>142</sup>

Incestuous persons, either parents with children, or children with parents, or brothers with sisters, are to be punished with the sword. Men who commit *stuprum* with another relation (i.e., a father with the wife of a son, or a son with the wife of a father or with a stepmother, or a stepfather with a stepdaughter, or a brother with the wife of a brother, or an uncle with a niece, or a nephew with an aunt, or anyone with two sisters or with an unrelated mother and her daughter) and those women with whom they committed *stuprum*, who knowingly commit *stuprum* with one another, after being beaten are to have their noses slit.<sup>143</sup>

First cousins or their children, who combine for marriage or otherwise committed *stuprum* together in a fleshly manner, or a father and son who enter a mother and daughter, or two brothers with two sisters, or two brothers with a mother and daughter, are to be beaten in addition to being separated.<sup>144</sup>

Let him who is either having sexual relations under the name of marriage with his own stepsister or is otherwise secretly entangled, together with her, have their noses slit. If he might be married, let them be beaten in addition to this.<sup>145</sup>

## CHAPTER 10: CONCERNING THOSE WHO ABDUCT WOMEN FOR MARRIAGE

See the thirteenth chapter of Letter A.

142. *Digest* 48.5.39 § 7; *Basilika* 60.37.38, Scheltema, A8:2986; *Peira* 49.14, Zepos, 4:201; Balsamon's commentary on Trullo 26, Rhalles and Potles, 2:363–64; *Prochiron auctum* 5.3, Zepos, 7:36.
143. Justinian, *Novel* 12.1; *Ecloga legum* 17.33, FBR, 10:236; *Ecloga aucta* 17.11, FBR, 3:71; *Ecloga privata aucta* 17.16, Zepos, 6:42; *Ecloga ad Prochiron mutata* 19.20, Zepos, 6:268; *Epanagoge* 40.61, Zepos, 2:365; *Prochiron* 39.69, Zepos, 2:225; *Basilika* 60.37.74, Scheltema, A8:2995–96; *Nomokanon of Fourteen Titles* 13.5, Rhalles and Potles, 1:303; *Prochiron auctum* 39.180, Zepos, 7:298–99.
144. *Ecloga legum* 17.37, FBR, 10:238; *Ecloga ad Prochiron mutata* 19.23, Zepos, 6:268; *Epanagoge* 40.62, Zepos, 2:365; *Prochiron* 39.72, Zepos, 2:225; *Basilika* 60.37.75, Scheltema, A8:2996; *Nomokanon of Fourteen Titles* 13.5, Rhalles and Potles, 1:303; *Prochiron auctum* 39.189, Zepos, 7:299.
145. *Ecloga legum* 17.25, 26, FBR, 10:232; *Ecloga privata aucta* 17.61, Zepos, 6:47; *Ecloga ad Prochiron mutata* 19.6, Zepos, 6:267; *Epanagoge* 40.60, Zepos, 2:365; *Prochiron* 39.63, Zepos, 2:224; *Basilika* 60.37.77, Scheltema, A8:2996; *Nomokanon of Fourteen Titles* 13.5, Rhalles and Potles, 1:303.



**CHAPTER 11:  
CONCERNING THOSE WHO RECEIVE FOR MARRIAGE  
WOMEN THAT CONSECRATED THEMSELVES TO GOD**

**FOURTH COUNCIL 16**

The sixteenth canon of the Fourth Council states, "It is not allowable for a virgin that dedicated herself to God, likewise also a monk, to enter into a marriage. If they would transgress their vows, let them be excluded from the Divine Communion. However, during the time of their repentance, the local bishop shall use economy toward the arrangement of each one's penance." The voice of Gregory the Theologian states, "If God confirms oaths for men, receiving these in man's midst, how great we reckon the danger for the one who is found to be transgressing those covenants which are between God and himself."<sup>146</sup>

**SIXTH COUNCIL 4**

The fourth canon of the Sixth Council defrocks the cleric who has carnal relations with a woman who is dedicated to God (clearly she would be either a virgin or a widow) and excommunicates a layman who does the same. However, the law punishes them in another manner.

Nevertheless, let it be said that the change of circumstances decreed the disuse of what will be discussed next by the canons.

The fifteenth canon of the Fourth Council states, "Let a woman deacon not be ordained (χειροτονείσθω) before she has reached her fortieth year. However, she who after ordination insulted Divine Grace and gave herself in marriage, both she and the man who committed *stuprum* with her are anathematized."

**BASIL 24**

However, St. Basil the Great states in his twenty-fourth canon, "Although not one law that forbids him to marry a second time is imposed on a widower, except only the penalty of second marriages, yet the Apostle judges that the woman who was enrolled in the order of widows and who married afterward is to be disregarded and not to be supported by the Church. In fact, if a sixty-year-old woman should descend into a second marriage, she will be

146. St. Gregory the Theologian, *Homily 40.8*, PG 36:368B.

excluded from Communion until she departs from passion, even hating its cursed impurity. If however, we enrolled her among the widows before her sixtieth year," he states, "the reproach is ours, not the weak woman's."

## LAW

Let both the men who behave lewdly with monastic females, deaconesses, and ascetics (as those who insult the Bride of Christ, the Church), and the women with whom they committed *stuprum* have their noses slit.<sup>147</sup>

Ordained deaconesses, if they would dare to shame their ordination by embarking upon marriage or other fornication in their mode of life shall become subject to death, and their possessions will be assigned to either their monasteries or churches. Men who dare to marry and commit *stuprum* with them are subject to the sword, and the public treasury will receive their property.<sup>148</sup>

## CONCERNING WOMEN DEACONS AND WIDOWS

There existed at one time the orders of women deacons and widows. For indeed, the Fathers ordained as deacons women who choose the nobility of virginity and furnished in their fortieth year proof of a life in chastity. Because the Fathers distrusted their easy deception and slipping toward evil, they thought it fit to ordain women at this age. However, the Apostle decreed that women who had been enrolled in the order of widows were not to be less than sixty years of age.<sup>149</sup> And he ruled fairly. For indeed, those women who have not tasted of the world's pleasures are not easily overcome by passions after so long a time. However, widows, who have experienced a man's bed, would have a greater inclination toward passion, their fleshly thought of arousing sexual intimacy. Wherefore, the Fathers decreed that a widow be sixty years old, because by this time a woman tends toward old age, and it is usual at this time that the flame of desire dies down. Nevertheless, there were also women that had not yet reached their sixtieth year who choose to be chaste with a lay *schēma*. The

147. Justinian, *Novel* 6.6; Justinian, *Novel* 123.43; *Ecloga legum* 17.23, FBR, 10:232; *Ecloga aucta* 17.26, FBR, 3:72; *Ecloga ad Prochiron mutata* 19.5, Zepos, 6:267; *Epanagoge* 40.59, Zepos, 2:365; *Prochiron* 39.62, Zepos, 2:224; *Prochiron auctum* 39.172, Zepos, 7:298.

148. Justinian, *Novel* 6.6; *Nomokanon of Fourteen Titles* 9.29, Rhalles and Potles, 1:211.

149. 1 Tim 5:9.

Fathers thought even more of them than male widowers. And they provided for the sustenance of these women from the possessions of the Church, lest by a motive of want they would be compelled to seek a second marriage (which motive, widowers who obtain things necessary for life in many ways do not possess to put forward as an excuse). It is clearly seen from the first letter of Paul the Great to Timothy that widows were thought worthy of as much care as possible by the Church.

In fact, women deacons at that time fulfilled a certain ministry in the clergy. At present, they are almost entirely unknown. Except there are some who say that they served in the baptizing of women because it was not proper for these naked women who were baptized after puberty to be seen by the eyes of men. Others say that it was permissible for them to even enter the holy altar and to share the things of male deacons nearly equally with them. However, women deacons were later forbidden by the Fathers both to enter the altar and to practice the things of their ministry on account of the involuntary monthly flow. That the holy altar was formerly accessible even to women is to be inferred from many other authorities and especially the funeral oration that the great Gregory the Theologian had made upon his sister.<sup>150</sup> However, it does not appear plausible to me that a woman became a deacon of the Sacred and Bloodless Sacrifice,<sup>151</sup> as there is no sound reason why women, who are not permitted to teach in public, should be raised to the rank of the diaconate, whose work is to purify orally those unbelievers that come forward for baptism.

Furthermore, the most ancient of the books in which the rites of all ordinations have been accurately recorded, also indicate that the age of a deaconess must be forty; that her *schēma* must be monastic and perfect; that during her life, she must contend for virtue with the most excellent of men; and that as much as is solemnized in her ordination, short of a little, is also celebrated in the case of male deacons. Thus, she who draws herself to the sacred table, before its uplifted heights, is covered with a veil. After the exclamation, "The Divine Grace which heals infirmities," she does not kneel, but only bows her head. The archpriest, who places his hand upon her, prays that she who seeks a chaste and seemly way of life fulfills the work of deaconess blamelessly, and in this way devotes herself to the holy temples. Indeed, the books

150. St. Gregory the Theologian, *Homily 8*, PG 35:789–817.

151. The implication here is that a woman cannot be a deacon of the Bloodless Sacrifice because of her involuntary monthly flow, i.e., her bloodiness would make the "Bloodless" Sacrifice bloody or impure.

do not permit her to minister the Unfiled Mysteries or to be entrusted with a fan (ῥιπίδιον) as in the manner of a male deacon. Next, the diaconal orarion is placed around her neck under the veil by the archpriest, who brings its two ends together in front. During the time of Communion, she partakes of the Divine Mysteries after the male deacons. Then, she who receives the chalice from the hands of the archpriest distributes nothing, but immediately places it on the holy table.<sup>152</sup>

**CHAPTER 12:  
THAT MARRIAGE MUST NOT BE CONTRACTED  
WITH HERETICS**

CONCERNING CLERICS

FOURTH COUNCIL 14

The fourteenth canon of the Fourth Council has altogether forbidden Orthodox clerics to be joined with heretical women. However, it commands that the children of those that already cohabit be brought into the Catholic Church. And if they happened to be baptized by heretics whose baptism is rejected by those who think soundly, they are to be baptized over again. But if their baptism is not thus rejected, they are to be chrismated only with divine myrrh. However, if they were not yet imprinted with the seal of baptism, the children are no longer to be baptized by heretics. Indeed, the council commands that Orthodox clerics are not even to join in marriage with heretics, certainly neither with Jews or pagans. I call heretics those who receive our Mystery, but who are mistaken in some things, on account of which they are at variance with the Orthodox. Jews are slayers of Christ, and pagans are manifest unbelievers who are also infested with idol-madness. The council states that if perhaps the heretic or the unbeliever promises to observe the Orthodox faith,

152. At the outset of this section dealing with the ordination of deaconesses, Blastares identifies his source of information as "the most ancient of the books in which the rites of all ordinations have been accurately recorded." His description of the requirements for ordination and its order of celebration is almost identical to that given in two manuscripts: *Paris graecus* 213 and *National Library of Athens* 662. The first is dated from the eleventh century, and second from the twelfth to the fourteenth. For a comparison of these texts, see Evangelos Theodorou, "Ἡ Χειροτονία ἢ Χειροθεσία τῶν Διακονισσῶν," *Θεολογία* 26 (1954): 580.

let the contract (συνάλλαγμα) proceed. However, let the union (συνάφεια) be delayed, until the substance of his promise would be confirmed by works. Latins who choose to marry Orthodox women are also required to do these things. However, they that do not comply with these things are liable to canonical penalties. Even with the dissolution of the marriage, the ones who attempted it are subject to penitential discipline.

#### LAODICEA 10

The tenth canon of Laodicea states, "Members of the Church must not indiscriminately join by marriage their own children to heretics."

#### CARTHAGE 21

The twenty-first canon of Carthage forbids the children of clerics to be joined in marriage to gentiles, i.e., unbelievers, or heretics.

#### SIXTH COUNCIL 72

The seventy-second canon of the Sixth Council in this way decrees word-for-word,

An Orthodox man is not permitted to be joined with a heretical woman, nor indeed is an Orthodox woman to be united with a heretical man. But if any such thing appears to have been done by anyone, the marriage is considered null, and the illicit cohabitation is dissolved. For the unmixable should not be mixed, nor a wolf be combined with a sheep, nor the lot of sinners with the portion of Christ. However, if anyone would transgress the things decreed, let him be excommunicated.

For if according to civil law, marriage is defined as a sharing and consortium of both divine and human law, how would they that differ concerning greater matters regarding the disposition of the soul, come together with one another while thinking contradictory things concerning the faith? On account of this, even after the dissolution of the illicit marriage, it is deemed right that the transgressors also be excommunicated.

The council decreed the latter things concerning those who are presently joined in marriage, with one party devoted to heretical dogmas and the other maintaining the things of the Orthodox faith. However, the council states that if both parties when

they came together in marriage at the beginning, were estranged from the lot of the Orthodox; then if the one recognized the truth, but the other remained subject to the darkness of impiety; the cohabitation will not be dissolved on account of this. As Paul the Great declares in the First Epistle to the Corinthians, "Thus if the faithful wife chooses to cohabit with an unbelieving husband, or contrariwise the faithful husband with the unbelieving wife, let him or her not be separated, for the unbelieving husband has been sanctified by the wife, and vice versa."<sup>153</sup> Except notice how the divine Apostle, utilizing condescension, states, "If the faithful part consents to cohabit with the unfaithful one," so that, if the faithful one does not consent, the marriage will without doubt be dissolved.<sup>154</sup>

While we have been persuaded that these things existed at the beginning and origin of the *kerygma*, for the present how is it possible for either a Jewish or Hagarite husband who was baptized, to still cohabit with an unbaptized wife; or the wife who was baptized, with a husband who does not believe? For example, this occurred in particular during the time of Patriarch Theodotos.<sup>155</sup> For an imperial bucinator who was baptized, was separated by patriarchal letter from his wife who was not convinced by the husband's entreaties to adopt many things of piety.

#### LAODICEA 31

The thirty-first canon of the Council in Laodicea states that, "One must not intermarry with all heretics, nor give sons and daughters to them in marriage (for fear that the latter learns the heterodoxy of those heretics), but ought rather to receive them in marriage if at least they promised to become Christians." The phrase, "One must not with all heretics," instead of, "with not one," is a literary expression, as is, "Do not fear, when a man becomes rich, he shall not receive everything when he dies."<sup>156</sup> Certainly, it is not possible for him to receive anything. And elsewhere, "for you have not created all the sons of men in vain."<sup>157</sup> Indeed, they are not created in vain, for to think this is sacrilegious.

153. 1 Cor 7:12–13.

154. 1 Cor 7:12.

155. Theodotos II, Patriarch of Constantinople (1151/52–1153/54); cf. Balsamon's account in Rhalles and Potles, 2:473.

156. Ps 48:16–17 (LXX).

157. Ps 88:48 (LXX).

## LAW

Let not a Jewish man take a Christian woman in marriage, nor a Christian man a Jewish woman, nor let a heretic and alien of the faith contract marriage with Christians by any pretext.<sup>158</sup>

**CHAPTER 13:**  
**BY WHICH REASONS MARRIAGE IS DISSOLVED**

## LAW

The civil law treats the dissolution of marriages in many places. However, this is done most completely by the novel of Justinian<sup>159</sup> which expressly sets forth the causes for which the husband or the wife is able to send a *repudium* (ῥεπούδιον),<sup>160</sup> i.e., a bill of divorce, to the spouse, and to obtain the dowry (ownership of which is kept by the wife with the children of the same marriage, or, if there are not children, ownership is enjoyed by the guiltless person). Indeed, in the past, it was possible for people both by ancient laws and long-held custom to dissolve cohabitations blamelessly, so that the husband could say to his wife, "Wife, manage your own affairs," and she to her husband, "Husband, manage your own affairs." And in particular, it had been legislated long ago that Hebrew husbands could send a bill of divorce (βιβλίον ἀποστασίου) to their wives. But at present, this has been done away with by Christians. However, the pious emperors enumerated causes by name, alone for which it is possible to dissolve marriages; and it is illicit to separate without one of these.<sup>161</sup>

## ON ACCOUNT OF THE WIFE

The husband sends a *repudium* to the wife and gains her dowry, as has been stated, for these causes:<sup>162</sup>

158. Code 1.9.6; Basilika 1.1.34, Scheltema, A1:7; Michael Attaleiates, *Opus de jure* 2.3, Zepos, 7:421; cf. *Synopsis minor* I.2, Zepos, 6:416; *Synopsis minor* A.8, Zepos, 6:328.

159. Justinian, *Novel* 117.

160. *Nomokanon of Fourteen Titles* 13.4, Rhalles and Potles, 1:294–95.

161. Zonaras's commentary on Trullo 87, Rhalles and Potles, 2:506.

162. On the following grounds, also compare *Nomokanon of Fourteen Titles* 13.4, Rhalles and Potles, 1:295.

- (1) If the wife is implicated in any plotting against the Empire, and did not reveal this to her own husband.<sup>163</sup>
- (2) If an accusation of adultery were to be made against the wife, and she were to be convicted as an adulteress according to the law.<sup>164</sup>
- (3) If she plotted against the life of her husband in any manner whatsoever, or consented for others to do this, and did not reveal it.<sup>165</sup>
- (4) If she attends banquets or bathes with strange men, against the will of the husband.<sup>166</sup>
- (5) If she stays outside of the home against the will of the husband, unless she happens to be with her own parents, or he drives her out without the aforesaid causes, and parents not existing for her, she spends the night outside.<sup>167</sup>
- (6) If she attends horse races, theatres, or hunts, in order to be seen, without her husband's knowledge or against his prohibition.<sup>168</sup>

Nevertheless, the Scriptural passage which states that the adulteress does not return to her own husband, assumes that the husband does not wish her to be received back.<sup>169</sup> Indeed, if the husband condones the crime, he may freely accept her within the space of two years, according to Justinian's novel and that of Leo the Wise.<sup>170</sup>

### ON ACCOUNT OF THE HUSBAND

However, the wife sends a *repudium* to the husband for the causes below, being able to receive both her dowry and the husband's gift on account of the marriage (ownership of which she holds

163. *Code* 5.17.8 § 3; Justinian, *Novel* 22.15 § 2; Justinian, *Novel* 117.8.1; *Epanagoge* 21.5, *Zepos*, 2:303; *Prochiron* 11.6, *Zepos*, 2:147; *Basilika* 28.7.1, Scheltema, A4:1357.
164. *Code* 5.17.8 § 3; Justinian, *Novel* 22.15 § 2; Justinian, *Novel* 117.8.2; *Epanagoge* 21.5, *Zepos*, 2:303–304; *Prochiron* 11.7, *Zepos*, 2:147; *Basilika* 28.7.1, Scheltema, A4:1357–58.
165. *Code* 5.17.8 § 3; Justinian, *Novel* 22.15 § 2; Justinian, *Novel* 117.8.3; *Epanagoge* 21.5, *Zepos*, 2:304; *Prochiron* 11.8, *Zepos*, 2:147; *Basilika* 28.7.1, Scheltema, A4:1359.
166. *Code* 5.17.8 § 3; Justinian, *Novel* 22.15 § 2; Justinian, *Novel* 117.8.4; *Epanagoge* 21.5, *Zepos*, 2:304; *Prochiron* 11.9, *Zepos*, 2:147; *Basilika* 28.7.1, Scheltema, A4:1359.
167. *Code* 5.17.8 § 3; Justinian, *Novel* 22.15 § 2; Justinian, *Novel* 117.8.5; *Epanagoge* 21.5, *Zepos*, 2:304; *Prochiron* 11.10, *Zepos*, 2:147; *Basilika* 28.7.1, Scheltema, A4:1359.
168. *Code* 5.17.8 § 3; Justinian, *Novel* 22.15 § 2; Justinian, *Novel* 117.8.6; *Epanagoge* 21.5, *Zepos*, 2:304; *Prochiron* 11.11, *Zepos*, 2:147–48; *Basilika* 28.7.1, Scheltema, A4:1359.
169. Jer 3:1 (LXX).
170. Justinian, *Novel* 117; Leo the Wise, *Novel* 32, Balsamon's commentary on Trullo 87, Rhalles and Potles, 2:509.



equally with the children, or, if there are no children, she herself holds ownership).<sup>171</sup>

- (1) If the husband himself conspires against the Empire, or after becoming aware of others that conspire, he does not reveal this to the emperor either in person or by any other persons.<sup>172</sup>
- (2) If the husband plots against the life of the wife in any manner whatsoever.<sup>173</sup>
- (3) If the husband plots against the chastity of the wife by endeavoring to deliver her up to other men in order to be debauched.<sup>174</sup>
- (4) If after the husband accuses her of adultery, he does not prove it.<sup>175</sup>
- (5) If the husband has carnal relations with another woman in the same house, or in the same city, and after being warned by the wife, her parents, or any other person, he does not wish to abstain.<sup>176</sup>

In these cases, the husband is not only fined the antenuptial gift, but also another third of its value from his other property, and submits to the penalties that the wife who was accused would have suffered.<sup>177</sup>

Neither can the wife separate from her husband by her own free will, nor he from her, without the judgement and vote of judges, as this is decreed by various Justinianian novels.<sup>178</sup> Thus, he that marries the woman who was not so separated is an adulterer.<sup>179</sup>

#### UNPENALIZED DISSOLUTION OF MARRIAGE, AND CONCERNING A MARRIAGE THAT IS DISSOLVED ON ACCOUNT OF ASCETICISM

However, a marriage is dissolved blamelessly when, after three years elapse, the husband was unable to have relations with his spouse,

171. Justinian, *Novel* 117.9; *Epanagoge* 21.6, *Zepos*, 2:304–305; *Prochiron* 11.13, *Zepos*, 2:148; *Basilika* 28.7.1, *Scheltema*, A4:1359; on the following grounds, also compare *Nomokanon of Fourteen Titles* 13.4, *Rhalles and Potles*, 1:295.
172. *Code* 5.17.8 § 2; Justinian, *Novel* 22.15 § 1; Justinian, *Novel* 117.9.1; *Epanagoge* 21.6, *Zepos*, 2:305; *Prochiron* 11.14, *Zepos*, 2:148; *Basilika* 28.7.1, *Scheltema*, A4:1359.
173. *Code* 5.17.8 § 2; Justinian, *Novel* 22.15 § 1; Justinian, *Novel* 117.9.2; *Epanagoge* 21.6, *Zepos*, 2:305; *Prochiron* 11.15, *Zepos*, 2:148; *Basilika* 28.7.1, *Scheltema*, A4:1359.
174. Justinian, *Novel* 117.9.3; *Epanagoge* 21.6, *Zepos*, 2:305; *Prochiron* 11.16, *Zepos*, 2:148; *Basilika* 28.7.1, *Scheltema*, A4:1359.
175. Justinian, *Novel* 117.9.4; *Epanagoge* 21.6, *Zepos*, 2:305; *Prochiron* 11.17, *Zepos*, 2:148; *Basilika* 28.7.1, *Scheltema*, A4:1359.
176. Justinian, *Novel* 117.9.5; *Epanagoge* 21.6, *Zepos*, 2:305; *Prochiron* 11.18, *Zepos*, 2:149; *Basilika* 28.7.1, *Scheltema*, A4:1360.
177. This appears to be linked to the fourth grounds of divorce on account of the husband; cf. Justinian, *Novel* 117.9.4; *Epanagoge* 21.6, *Zepos*, 2:305; *Prochiron* 11.17, *Zepos*, 2:148; *Basilika* 28.7.1, *Scheltema*, A4:1359.
178. Balsamon's commentary on *Trullo* 87, *Rhalles and Potles*, 2:509.
179. Zonaras's commentary on *Trullo* 87, *Rhalles and Potles*, 2:506.

although he does not choose divorce; the antenuptial gift remains with the husband, who is punished with no loss of property.<sup>180</sup>

A marriage is also dissolved when one of the parties dedicates himself or herself to asceticism, traversing the road toward the better things and choosing the better life. Indeed, in this case, we prescribe that both the husband and wife who depart for better things, be able to dissolve the cohabitation and retire with some small remaining consolation for the party left behind. Wherefore, the one contracting would fix by agreement a benefit to occur in case of the other's death. This benefit is necessary for the party left behind by the other (either husband or wife can establish it), because he that chooses one mode of life instead of another is thought to be dead for his spouse.<sup>181</sup>

Indeed, the tonsure certainly occurs, even when the other spouse does not agree. And we say that a divorce takes place with good grace, and the remaining person is able to enter into another marriage. But this has not been allowed for the wife of the bishop who is being ordained. And on account of this, the ordination must take place with her approval; and in this way, her tonsure must incontrovertibly follow closely afterward.<sup>182</sup>

A marriage is also dissolved when the husband or the wife becomes a prisoner, and it is not certain for five years whether she or he lives.<sup>183</sup>

However, if contrary to the causes delineated by us (he states), some would dare to dissolve a marriage, we order, if they might have descendents either from this or from another marriage, that their property be given to the latter, and they be put into a monastery for the rest of their lives, and be given a place in the monastery from their property. However, if they were not to have descendents, but have ascendants, the latter receive a third of the possessions, if they did not agree to the dissolution of the marriage. However, if neither ascendants nor descendents exist, we order that all property be given to the monastery in which they are confined. But also,

180. *Nomokanon of Fourteen Titles* 13.4, Rhalles and Potles, 1:296; cf. Justinian, *Novel* 22.6; *Epanagoge* 21.2, Zepos, 2:300–301; *Prochiron* 11.2, Zepos, 2:145–46; *Basilika* 28.7.4, Scheltema, A4:1363.

181. Justinian, *Novel* 22.5; *Epanagoge* 21.1, Zepos, 2:300; *Basilika* 28.7.4, Scheltema, A4:1362–63; *Nomokanon of Fourteen Titles* 13.4, Rhalles and Potles, 1:297.

182. This text is based on a September 20, 1186, decision of Emperor Isaak II Angelos (1185–1195, 1203–1204; Rhalles and Potles, 5:321–23), which is summarized in Theodore Balsamon's commentary on Trullo 48 (Rhalles and Potles, 2:420–21). For additional information, see Dölger, 1573.

183. Justinian, *Novel* 22.4; *Epanagoge* 21.3, Zepos, 2:301; *Prochiron* 11.3, Zepos, 2:146; *Basilika* 28.7.4, Scheltema, A4:1363; *Nomokanon of Fourteen Titles* 13.4, Rhalles and Potles, 1:297.

we order that those who compose such illicit contracts, be subject to corporal punishment, and be sent into exile. But if those who attempted to dissolve the marriage were to wish once more to be joined before they are confined to monasteries; permission by us is given to them, we remit the previously mentioned punishments for them, and they are to have their property. However, when one party wishes the marriage to be restored, and if the other were to not consent, the punishments prevail against the one that does not assent. We order that these things take place through the supervision of the bishops most beloved of God.<sup>184</sup>

If the marriage were to be dissolved by the agreement of both parties or through love of chastity, we order that each of the two parties immediately enter into the monastic life, they being kept clearly free from punishment. However, if one of them were to enter into a marriage or fall into fornication, the children will receive all of his property. But if he does not have children, the public treasury shall receive it.<sup>185</sup>

**CHAPTER 14:  
CONCERNING WOMEN DEACONS AND WIDOWS**

See the eleventh chapter of the present letter.

**CHAPTER 15:  
CONCERNING WOMEN WHO HAVE BEEN BETROTHED;  
IN WHICH ALSO, CONCERNING BETROTHAL**

**BASIL 69**

The sixty-ninth canon of Basil the Great states,

If a reader were to have intercourse with his betrothed before the wedding, and she consented to it, after being excommunicated for a year, he returns once more to read, not advancing into a greater rank. However, if without betrothal he were to have relations with a woman, even if he perhaps made promises to the woman to take her for his wife, he is also deprived of the ministry

184. Justinian, *Novel* 134.11; *Basilika* 28. 7.6, Scheltema, A4:1364–65; the text is also discussed by Balsamon in his commentary on Trullos 48, Rhalles and Potles, 4:200–202.

185. Justinian, *Novel* 117.10; *Prochiron* 11.4, Zepos, 2:146; *Prochiron auctum*, Zepos, 7:111; cf. *Epanagoge* 21, schol. 6, Zepos, 2:301–302.

of reader. But if a minister, i.e., a subdeacon, was caught by passion, he is completely cast out of the ministry.

## SIXTH COUNCIL 98

The ninety-eighth canon of the Sixth Council subjects to charges of adultery, the one that brings into the communion (κοινωνία) of marriage, a woman who has been betrothed to another man, while the man who betrothed her still lives. However, if a man were to commit *stuprum* with her, not through marriage but through fornication, he also is penanced as an adulterer, and the wife as an adulteress. But he that was ignorant of the adultery is penanced as a fornicator.

### CONCERNING BETROTHAL

#### DEFINITION OF BETROTHAL

Indeed, jurists define betrothal as a mention and promise of future marriage.<sup>186</sup> Even the Mosaic Law reckoned betrothal as a marriage. He that committed *stuprum* with the woman betrothed to another man, was punished as an adulterer.<sup>187</sup> Moreover, the contract of the betrothal joins them together, and addresses the betrothed woman by the name of wife. In fact, the Mosaic Law states, "he violated his neighbor's wife," i.e., deflowered his betrothed.<sup>188</sup> In this way also, the Holy Virgin was called the wife of Joseph; "do not fear to take Mary your wife."<sup>189</sup> Long ago among us, the betrothal took place with a kiss of those being joined and earnest money.<sup>190</sup> It was even possible to dissolve the betrothal, the penalty of a fine being paid. However, as the already discussed canon decrees, a man that takes a woman for a wife who is not yet released from a betrothal, was judged reasonably to be an adulterer. But where no betrothal took place, nor kiss or donation of earnest money followed, but only bonds through mere speech, even if another man takes the woman, he is not liable to the charge of adultery. From the novel, which was later pronounced by the pious emperor Alexios Komnenos in the year 6592,<sup>191</sup> betrothal is nearly equivalent to complete mar-

186. *Digest* 23.1.1; *Epanagoge* 14.1, *Zepos*, 2:270; *Prochiron* 1.1, *Zepos*, 2:120; *Basilika* 28.1.1, *Scheltema*, A4:1315.

187. *Deut* 22:23–24 (LXX).

188. *Deut* 22:24 (LXX).

189. *Matt* 1:20.

190. This money was known as ἀρραβών.

191. The year 6592 according to Byzantine reckoning from the creation of the world is equivalent to 1084 AD.

riage, inasmuch as it is celebrated with sacred prayer. Above all, it is not dissolved, unless according to the causes by which a complete marriage is sundered. For the novel reads as follows:

EMPEROR ALEXIOS KOMNENOS'S NOVEL  
CONCERNING BETROTHAL, WHICH WAS  
PRODUCED IN THE YEAR 6592<sup>192</sup>

True betrothals are ratified by us, as long as they are known to be celebrated at the age prescribed by us and with a sacred blessing. The appropriate age of a betrothal and wedding is past the twelfth year for a female, and with the completion of the fourteenth year for a male. After the sacred song of prayers, the customary observances of the *arrha* (earnest money) and kiss, and a brief or long interval of time (as determined by the contracting parties), we decree that legal marriage proceed without evasion and that they not occur together, at the same time, in one day and hour. However, if betrothals and engagements were to be formed before the time decreed by us to establish them, and the already discussed observances do not take place, these are neither true betrothals nor are they called such, although the penalty of a fine is applied. Indeed, properly speaking, betrothals will not be dissolved by payment of fines, nor will they henceforth be expressed in writing through contracts. Because betrothals are not confirmed by contracts, but through the invocation of God, they also remain perpetually indissoluble, being dissolved only for the same causes as marriage. However, because after a girl's seventh year, betrothals have not proceeded well according to the usage of the old law (for each man freely visiting his betrothed, by continuous seeing and by freedom of speech, kindles the burning of passion), we also decree this: engagements that are in the form of a betrothal, which occur from the contracting parties' seventh year of age up to the fourteenth or twelfth year, do not at all hold the position of a legal and confirmed betrothal, but are viewed only as confirmed agreements and operate according to the usage of other contracts. However, the old law that was promulgated concerning betrothal is in force on persons who have been impeded only because of a fiancée who was repudiated, through the regulation that governs this circumstance among Christians. For although that which takes place is not a full betrothal according to rigorousness, yet because it appears to possess the aim of a betrothal, and consequently lays the foundation of marriage, it would be well that persons who

192. Alexios Komnenos, *Novel 24*.

have been impeded by the law be again forbidden, and that no one take for a wife she who became the betrothed of one man and who was not permitted by the old law to be joined by marriage to another man when the betrothal was dissolved.<sup>193</sup>

## CONCERNING BETROTHAL OF CLERGY

### BALSAMON

At any rate, it is also not permitted for someone of the altar, who is parted from his own betrothed by death or another cause before the wedding, to be joined to another wife. Indeed, he that is discovered to have done this, is defrocked as a one that married a second time, and the reader who fell into such a thing does not advance into another grade.<sup>194</sup>

Indeed, if the betrothal is nonexistent, but if the person that was pledged to him who wishes to be a priest, exceeded the age of six, it is not permitted for the betrothed man to be joined to another woman, and thus be a priest. For it is reckoned as bigamy because of concupiscence, in this case the woman is capable of sexual love. However, if the person pledged to him was less than six years old when the abolition of the agreements occurred, such a man who is married to another woman is able to enter the priesthood without impediment. This is not maintained in the case of the laity. Indeed, only men of the altar must be husbands of one wife and a chaste woman. Just as also before marriage, these men must be honored in all ways for chastity.<sup>195</sup>

However, when the betrothal is fully constituted, even if the husband had been separated from the betrothed by her death before he was sexually united with her, the layman cannot even take either her cousin or another person who has been forbidden by

193. The text that presented is actually a paraphrased adaptation of the second section of *Novel 24*. Omitted is the first section that dealt with the history of past legislation on betrothal and the third that concerned the manner of implementation. Included is material from Alexios I Komnenos's *Novel 31*, which was issued in 1092. The latter legislation dealt with the relationship of contracts and fines to betrothal as well as the emperor's use of economy. Only one point of the 1092 novel is summarized concerning engagements and penalty clauses. The provision has been left out that deals with the emperor's power of economy to release couples from age requirements and to allow the formation of engagements and betrothals at an earlier age. See the texts in Zepos, 1:305–309, 319–25, and compare the discussion in *Nomokanon of Fourteen Titles* 13.2, Rhalles and Potles, 1:286–88; for bibliographic information on both novels, see Dölger, 1116 and 1167.

194. Balsamon's commentary on Basil 69, Rhalles and Potles, 4:226.

195. *Nomokanon of Fourteen Titles* 13.4, Rhalles and Potles, 1:300–301.

the law. For it is not coition (*συνάφεια*), but the rite of prayer, that causes the betrothal to be reckoned as a marriage.<sup>196</sup>

#### CONCERNING HIM THAT COMMITS *STUPRUM* WITH HIS OWN MOTHER-IN-LAW

If it happened that before the full celebration of sacred rites, but while the betrothal alone was in force, the bridegroom had committed *stuprum* with his mother-in-law or with another of his betrothed's relatives, the marriage will be forbidden. Certainly it is not permissible for incest to be knowingly promoted. However, if after the marriage is rightly constituted this transgression was to occur, the marriage is not dissolved, but the ones who committed the incest will be punished, for the law states, "That which was valid from the beginning, is not invalidated by that which supervenes."<sup>197</sup>

#### BY WHICH CAUSES BETROTHALS ARE DISSOLVED

##### LAWS

The betrothal is dissolved, just as also marriages, on account of these worthy causes:<sup>198</sup>

- (1) If the betrothal is without foundation and illicit because of the age of the children.<sup>199</sup>
- (2) If the wife has been discovered to be impregnated from semen belonging to another.<sup>200</sup>
- (3) It is also dissolved on account of a new unknown religion, and variance of dogmas.<sup>201</sup>

196. *Nomokanon of Fourteen Titles* 13.2, Rhalles and Potles, 1:291–92.

197. *Digest* 50.17.85; *Epanagoge* 32.4, Zepos, 2:333; *Prochiron* 25.5, Zepos, 2:175; *Basilika* 2.3.85, Scheltema, A1:56; for the entire passage, see *Nomokanon of Fourteen Titles* 13.2, Rhalles and Potles, 1:279; *Prochiron auctum* 4.49, Zepos, 7:31.

198. Compare these grounds with those enumerated in the commentary on Trullo 98 attributed to Zonaras, Rhalles and Potles, 2:539–40.

199. *Digest* 23.1.14; *Epanagoge* 14.11, Zepos, 2:271; *Prochiron* 1.8, Zepos, 2:120; *Basilika* 28.1.12, Scheltema, A4:1317; Leo VI, *Novel* 109, Noailles, 354–57; Alexios I Komnenos, *Novel* 24, Zepos, 1:307–308; *Prochiron auctum* 1.8, Zepos, 7:11.

200. Leo VI, *Novel* 93, Noailles, 306–309; in his commentary on Trullo 98, Balsamon states regarding this legislation, Rhalles and Potles, 2:541:

Read also the ninety-third novel of the Lord Emperor Leo the Philosopher, which decreed that a betrothal is dissolved if, after it took place, the woman might be discovered pregnant from previous reception of semen belonging to another.

201. *Code* 1.4.16; *Prochiron* 2.3, Zepos, 2:12; *Scholia ad Basilika* 28.2.2, Scheltema, B5:1806; Leo VI, *Novel* 93, Noailles, 306–307; cf. *Nomokanon of Fourteen Titles* 12.13, Rhalles and Potles, 1:271.

- (4) Or on account of baseness of conduct.<sup>202</sup>
- (5) Or a change of position in life (τύχης ἐναλλαγὴν).<sup>203</sup>
- (6) Or a delay of the wedding which is extended beyond four years not from a reasonable cause, such as perhaps a long illness, the death of parents, capital crimes, or a long journey which takes place by necessity.<sup>204</sup>
- (7) Or furthermore, because the betrothal took place by the will of the archon of the eparchy, and both the maiden and her parents did not consent.<sup>205</sup>
- (8) Or on account of a sincere tonsuring and change to the monastic life.<sup>206</sup>
- (9) Or being a senator.<sup>207</sup>
- (10) Or because his goods are confiscated by the public treasury, or are found liable for another public use.<sup>208</sup>

Therefore, when one of the enumerated reasons does not divide the union, he that takes for a wife, she who was betrothed to another while the betrothed man yet lives, commits adultery.

## LAWS

Betrothal is a mention and promise of future marriages.<sup>209</sup>

Betrothal takes place both in writing and orally, and is established by mere consent even between those who are absent.<sup>210</sup>

202. *Code* 5.1.5; *Scholia ad Basilika* 28.2.2, Scheltema, B5:1806.

203. *Peira* 49.26, *Zepos*, 4:205; J. Zhishman interprets τύχης ἐναλλαγὴν to mean a sudden change in material fortunes resulting in great poverty, and cites the legal decision in the *Peira* as an example based on these grounds; see J. Zhishman, *Das Eherecht der Orientalischen Kirche* (Wien: Wilhelm Braumüller, 1864), 666; cf. *Ecloga privata aucta* 1.3, *Zepos*, 6:1.

204. *Digest* 23.1.17; *Epanagoge* 14.13, *Zepos*, 2:271; *Prochiron* 1.10, *Zepos*, 2:121; *Basilika* 28.1.17, Scheltema, A4:1317.

205. *Code* 5.2.1; *Epanagoge* 15.6, *Zepos*, 2:273; *Prochiron* 2.8, *Zepos*, 2:123; *Basilika* 28.1.20, Scheltema, A4:1318.

206. Justinian, *Novel* 123.39; *Epanagoge* 15.7, *Zepos*, 2:273; *Prochiron* 2.9, *Zepos*, 2:123; *Basilika* 28.2.4 (5), Scheltema, A4:1320.

207. *Digest* 23.2.44; *Basilika* 28.5.24, Scheltema, A4:1349, "Συγκλητικὸς οὐ γαμεῖ τὴν ἑτέρῳ εὐγενεῖ γαμεῖσθαι κωλυόμενην," this prohibition applies to a senator's marriage with a freedwoman, prostitute, or actress.

208. Capital punishment, reduction to servile condition, or loss of citizenship resulted in confiscation of goods, *Digest* 48.20.1 and *Basilika* 60.52.1, Scheltema, A8:3091. These were probably the circumstances that also precluded the marriage.

209. *Digest* 23.1.1; *Epanagoge* 14.1, *Zepos*, 2:270; *Prochiron* 1.1, *Zepos*, 2:120; *Basilika* 28.1.1, Scheltema, A4:1315.

210. *Digest* 23.1.4; *Epanagoge* 14.2, *Zepos*, 2:270; *Prochiron* 1.2, *Zepos*, 2:120; *Basilika* 28.1.2, 8a, Scheltema, A4:1315, 1316.



I am not able to take for a wife my father's or brother's betrothed, although their marriage had not taken place, because she holds the position of stepmother and bride.<sup>211</sup> Nor am I able to marry the mother of a woman formerly betrothed to me, because she has become my mother-in-law.<sup>212</sup>

A tutor does not contrive a betrothal for the female orphan against her will, nor does he dissolve one that takes place.<sup>213</sup>

Insanity impedes a betrothal. However, if this occurs afterward, it does not dissolve the constitution of a betrothal.<sup>214</sup>

The consenting parties consent to the betrothal and the marriage. Both the parties who are joined and their parents consent.<sup>215</sup> Those persons who do not expressly object, appear to consent. Dependents are only able to object when the parents bring about betrothal for them in ways that are unworthy and shameful. However, we decree that the intention to marry by dependents who are not being betrothed (even if children choose to cause themselves to be disinherited, only in order that they do not fulfill their parents' will but their own) is entirely invalid. Indeed, the laws have determined in every way to impede the impulses of the young toward their own ruin and destruction.<sup>216</sup>

When the parents manifestly disagree concerning the choice, the father's opinion prevails.<sup>217</sup> When the male dependent disagrees, a betrothal does not occur in his name.<sup>218</sup>

The father of a female dependent is able to dissolve a betrothal, but not that of a free agent.<sup>219</sup>

She who appears to understand well what is occurring, is betrothed, that is to say, she who is not less than seven years old.<sup>220</sup> Nevertheless, if when the betrothal has taken place within the

211. *Institutes* 1.10 § 9; *Epanagoge* 17.16, Zepos, 2:279; *Prochiron* 7.10, Zepos, 2:137; *Basilika* 28.5.2 §9, Scheltema, A4:1345.
212. *Digest* 23.2.14 § 4; *Epanagoge* 17.10, Zepos, 2:279; *Prochiron* 7.13, Zepos, 2:137; *Basilika* 28.5.3 (2) § 4, Scheltema, A4:1346.
213. *Digest* 23.1.6; *Epanagoge* 14.8, Zepos, 2:270; *Prochiron* 1.4, Zepos, 2:120; *Basilika* 28.1.4, Scheltema, A4:1315.
214. *Digest* 23.1.8; *Epanagoge* 14.14, Zepos, 2:271; *Basilika* 28.1.6, Scheltema, A4:1315; *Synopsis Basilicorum*. M. 15.4, Zepos, 5:425.
215. *Digest* 23.1.7 § 1; *Epanagoge* 14.5, Zepos, 2:270; *Prochiron* 1.3, Zepos, 2:120; *Basilika* 28.1.5, Scheltema, A4:1315.
216. *Digest* 23.1.9, 10; *Epanagoge* 14.10, Zepos, 2:270–71; *Prochiron* 1.6, Zepos, 2:120; *Basilika* 28.1.9, 10, Scheltema, A4:1316.
217. Source unknown.
218. *Digest* 23.1.13; *Epanagoge* 14.6, Zepos, 2:270; *Prochiron* 1.7, Zepos, 2:120; *Basilika* 28.1.11, Scheltema, A4:1317.
219. *Digest* 23.1.10; *Epanagoge* 14.7, Zepos, 2:270; *Prochiron* 1.5, Zepos, 2:120; *Basilika* 28.1.8, Scheltema, A4:1316.
220. *Digest* 23.1.14; *Epanagoge* 14.11, Zepos, 2:271; *Prochiron* 1.8, Zepos, 2:121; *Basilika* 28.1.12, Scheltema, A4:1317; cf. Leo VI, *Novel* 109, Noailles, 354–57.

thirteenth year, some would dare to impose either the mentioned blessing or the crowning, because they have become transgressors of the divine laws then the preceding betrothal together with the apparent union are dissolved, and the fines that are paid by each party to the betrothal (who suffer a penalty for the shameless act) are put into the public treasury. Nor has the priest who dared to be on hand for such an act been without blame, but is subject to the austerity of the sacred canons.<sup>221</sup>

Mourning for a husband does not impede the wife from being betrothed.<sup>222</sup>

He who is betrothed to a maiden already at the age of adolescence, and who does not agree during the betrothal to a time for the wedding, ought to marry her within two years if he lives in the same eparchy, and within three years, if he is in absence. However, if he delays without a reasonable cause, the maiden can be joined with another.<sup>223</sup>

The archons of that eparchy over which they rule must not betroth themselves. However, if they shall do this, the maiden and her parents, tutors, or curators, are allowed to refuse the marriage and decline the earnest money. This also holds in the cases of his sons, grandsons, relations, colleagues, all those in his rank, and his household, if they were betrothed through the efforts of the archon. Nevertheless, if from the start, the maiden also wishes to be joined with him, the marriage comes into force.<sup>224</sup>

At any rate, it is notable that the law impedes the contract when the archon uses his office and is able to be regarded with fear by the parents of the maiden. So, if then there was an archon, and he was not able to frighten the maiden's parents, the betrothal will not be impeded.<sup>225</sup>

221. *Epanagoge* 14.11, Zepos, 2:271; cf. *Digest* 23. 1.14; *Prochiron* 1.8, Zepos, 2:120; *Basilika* 28.1.12, Scheltema, A4:1317; Leo VI, *Novel* 109, Noailles, 354–357; Alexios I Komnenos, *Novel* 24, Zepos, 1:307–308; *Prochiron auctum* 1.8, Zepos, 7:11.

222. *Digest* 3.2.10; *Epanagoge* 14.15, Zepos, 2:271; *Prochiron* 1.12, Zepos, 2:121; cf. *Basilika* 21.2.10, Scheltema, A3:1035; *Nomokanon of Fourteen Titles* 13.2, Rhalles and Potles, 1:277.

223. *Code* 5.1.2; *Epanagoge* 14.12, Zepos, 2:271; *Prochiron* 1.9, Zepos, 2:121; *Basilika* 28.1.16, Scheltema, A4:1317.

224. *Code* 5.2.1; *Epanagoge* 15.6, Zepos, 2:273; *Prochiron* 2.8, Zepos, 2:123; *Basilika* 28.1.20, Scheltema, A4:1318.

225. *Epanagoge* 15.6, Zepos, 2:273; *Prochiron* 2.8, Zepos, 2:123; see also the comments attributed to the antecessor Thalelaios (fl. sixth century) originally dealing with the *Code* (most probably *Code* 5.2.1) and contained in the scholia on *Basilika* 28.1.20, Scheltema, B5:1802.

**CHAPTER 16:  
CONCERNING CLERICS WHO EXPEL THEIR OWN  
WIVES ON THE PRETEXT OF PIETY**

**APOSTLES 5**

With regard to a bishop, presbyter, or deacon, who expels his own wife on the pretext of piety, the fifth canon of the Holy Apostles excommunicates him until she is received back again; and defrocks him who persists. Indeed, the Lord also decreed this in the Gospels, that it was not permitted for one that heeded the old Law to expel his own wife without a declared reason, whenever he would so wish.<sup>226</sup> For it seemed to slander marriage, as if legal coition was impure. However, the Scriptures declared marriage to be honorable and the bed undefiled.<sup>227</sup>

**SIXTH COUNCIL 13**

The thirteenth canon of the Sixth Council also makes mention of this with the same words, without the addition of the word "bishop." Indeed, this was the first council to order bishops to give up their spouses.

**AGAIN CONCERNING LAITY WHO EXPEL  
THEIR OWN WIVES**

**APOSTLES 48**

The forty-eighth Apostolic canon subjects to excommunication the layman that illegally expels his own wife, takes another wife, and submits to himself a woman that has been repudiated (clearly not according to the laws) by another.

**BASIL 9, 21, 35, 77**

Moreover, so far as this subject is concerned, the Holy Spirit spoke through the tongue of the great father Basil in his ninth canon, so as to fully explain matters with great fairness. Indeed, he states that it was consistent with the Lord's decision that a reason of adultery would equally dissolve a marriage for both men and

226. Matt 19:3–9.

227. Heb 13:4.

women. However, it is shown that the practice of the Church does not so obtain. Thus, in the case of women, we find much strictness when the Apostle states, "He who is joined to a prostitute is one body,"<sup>228</sup> and Jeremiah that, "If she were with another man, she will not return to her husband, but being polluted she will be polluted"<sup>229</sup> (unless the husband would be clearly willing to receive her), and Solomon in Proverbs, "He who keeps an adulteress, is foolish and ungodly,"<sup>230</sup> i.e., he who has intercourse with a married woman, any woman who is shown to be an adulteress. However, the Church's practice commands that husbands who commit adultery or fornicate be kept by their wives. Indeed, if a husband was angry with the wife and were to beat her, she must be patient. Or if she were to suffer a loss in property, even see her dowry spent, or even become jealous because her husband was committing *stuprum* with other women, it is not permissible for her to be separated from the husband because of these things. For if, when one of the cohabiters happens to be an unbeliever, it has not been allowed for the other to be separated on account of the uncertainty of the outcome, according to the Blessed Paul (he states, "How do you know, oh wife, whether you will save your husband?"<sup>231</sup>), how would she that dissolves the union because of another reason, be free from blame? Therefore, she that illegally abandons her husband, if she cohabits with another man, is reckoned an adulteress. However, she that joined legally to an abandoned husband, neither is condemned as an adulteress nor as a harlot. Nevertheless, if the husband who departed from the wife went to another woman, he himself is an adulterer because he makes her commit adultery, and she that cohabits with him is an adulteress because she enticed another's husband to herself. So much then for Basil. According to the novel of Justinian published later, which comprises chapter thirteen of the present letter, the following also has been reckoned among the other causes on account of which it is permissible for women to dissolve their cohabitation: if the husband committed *stuprum* with another woman, clearly in the same house and city, and if after his own wife's kin censure and enjoin him, he was not persuaded to abstain from intercourse with her. Thus, under these circumstances, the novel permits wives to dissolve their marriages on account of jealousy.

228. 1 Cor 6:16.

229. Jer 3:1ff. (LXX).

230. Prov 18:22 (LXX).

231. 1 Cor 7:16.

In canon twenty-one, he judges that the man who cohabits with a wife, but on account of licentiousness commits *stuprum* with another woman, is to be liable for fornication, and is to be given more penitential discipline than the man who does not live with a woman, and who is caught by this passion. Whereas one grants mercy to the latter on account of his natural need, the former is deprived of an excuse, seeing that he has the legal abatement of physical tyranny and is involved in the mire of licentiousness only because of incontinence. He states, "At any rate, if the sin were to occur with a woman free of marriage, we do not have a canon which would subject him to the charge of adultery, or which would exclude him from cohabitation with his own wife." Therefore, the wife will receive the husband who returns from fornication. However, he will dismiss from the home the wife who has relations with another man; and being unwilling, he will not be compelled to take her back. Basil states, "the reasoning of these matters is not easy, but the custom has so prevailed."

In the thirty-fifth canon, he states that in the case of those who dissolve the marriage, it is necessary to examine the cause. And if the wife deserted her husband without reason, while she is judged worthy of punishment, he is worthy of pardon. Nevertheless, in order to commune with the Church, he also must clearly not have been intimate with another woman.

In the seventy-seventh canon, he that deserts a woman who is legally joined to him, and that marries another, is of course subject to the crime of adultery. He states that our Fathers have subjected them to penitential discipline for seven years on account of such things, and thus they will be counted worthy of the Oblation, if they repent with tears.

#### SIXTH COUNCIL 87

The Fathers of the Sixth Council also confirm these things, using St. Basil's same words in their eighty-seventh canon. They also condemn as an adulteress the woman who illegally deserts her husband without cause. However, they deem the husband worthy of pardon, and consider him worthy of communion with the Church. Nevertheless, with regard to the man who deserts the woman that is legally joined to him, and who makes a supposed marriage contract with another, because he is subject to the crime of adultery, they debar him from the Sacred Species for up to seven years.

## BASIL 46, 48

And again Basil, the adornment of the Church, states in his forty-sixth canon that she who through ignorance married a man abandoned for a brief time by his own wife, perhaps on account of a grievance or quarrel, and then who was dismissed by him after the first wife returned from perhaps a foreign land, fornicated in ignorance and shall not be debarred from marriage. For she was not dismissed by a legal husband because the prior marriage was not yet dissolved, but she was free from fornication. However, he states, "It would be better if she might remain thus," because it is not becoming for her who was called the wife of one man, to live with another. Indeed, the law states that, "We consider not only what is permissible in marriages, but also what is seemly."<sup>232</sup>

He states in his forty-eighth canon that,

She who was abandoned without cause by her own husband, should, in my opinion, remain thus. For the Lord who said, "whosoever will abandon his wife, makes her to commit adultery,"<sup>233</sup> excluded her from sexual intercourse (κοινωνίαν) with another man. For it is not fair for the husband to be liable as the cause of adultery and she to be free from blame, whom the Lord declared to be an adulteress on account of her sexual intercourse with another man.

But you have learned how these matters are more clearly treated by the civil laws.

## CARTHAGE 106

But also the 106th canon of the Council in Carthage admonishes those who are separated from the union of marriage to either be reconciled to one another, or to remain thus. According to the decision of the Lord, "Whom God joined, let no man separate,"<sup>234</sup> and of the Apostle, "Have you been bound to a woman? Do not seek a divorce."<sup>235</sup> See also the ninth chapter of Letter B, "Concerning those who despise legal marriages."

232. *Digest* 23.2.42; *Epanagoge* 17.18, Zepos, 2:276; *Prochiron* 7.16, Zepos, 2:137; *Basilika* 28.5.7 (6), Scheltema, A4:1346.

233. Matt 5:32.

234. Matt 19:6.

235. 1 Cor 7:27.

**CHAPTER 17:  
THAT IT IS NECESSARY FOR BISHOPS TO BE  
SEPARATED FROM THEIR OWN WIVES**

**SIXTH COUNCIL 12**

The divine Fathers of the Sixth Council in their twelfth canon forbid archpriests after ordination to live at all with the legal wives who were joined to them by marriage before ordination; and state, "We do not decree this for the abolition of what was legislated by the sacred apostles in their fifth canon, but to bring about the Church's advancement toward that which is better." For indeed, the divine apostles, after the Church had recently renounced the folly of the Jews and the superstition of the Greeks, permitted some of their paternal customs to be used. Certainly, the archpriests of both the Jews and Greeks were not separated from their spouses. However, at the present time, they say that it is necessary for archpriests who govern their lives with strict chastity, not only to abstain from sexual intercourse with other women, but also with their own wives. Indeed, this allows no increase of scandal whatsoever to those under their power. They also add the apostolic saying, "Be without offence to Jews, Greeks, and the Church, etc."<sup>236</sup> Next, they apply the penalty of defrocking to those who do not observe the canons.

**THAT IT IS NECESSARY FOR THE BISHOP'S  
SEPARATED WIFE TO BE TONSURED**

**SIXTH COUNCIL 48, 30**

In the forty-eighth canon, they do not permit the wife who is separated by common agreement from him that is about to be seated at the helm of the episcopacy, to live with him at all. Instead, they order her to enter a monastery that is not located in the neighborhood of the bishop's residence. Indeed, it is impossible for those who see each other frequently not to kindle passion in themselves through the memory of their former way of life. However, there, in the monastery, they deem her worthy of receiving the bishop's care, if she might be in need. Certainly if it is not permitted for the bishop himself to expend episcopal property on his person beyond necessities, she who has the means to live from her own resources,

236. 1 Cor 10:32.

will hardly be supported from the property of the Church. Even if her life might be chaste and she is promoted to the rank of deaconess, we command her to enter a monastery, because it is indispensable for her to be tonsured. For it is possible for her not to be divorced before the ordination of the husband, and consequently the ordination and the tonsuring to be impeded. However, when she agrees on the matter of the ordination, it is also necessary that the divorce be confirmed by the tonsuring. Questions concerning this subject were examined before Isaak Angelos, three patriarchs (the Ecumenical, of Antioch, and of Jerusalem), and about forty metropolitans, all sitting in council.<sup>237</sup> Recording and confirming this with synodical letters, they decided that the wife of a bishop, who is being ordained, ought incontrovertibly to be tonsured.<sup>238</sup> In consequence, it is clear that neither is it licit for the wives of priests to marry a second time.

However, the thirtieth canon of the same council has been promulgated by the divine Fathers specifically concerning priests and deacons in barbaric churches, who make an agreement with their spouses to refrain from sexual intercourse with one another on the supposed pretext of piety. They state, "We order them to no longer live with their wives, in order that they therefore would furnish complete proof of their promise. We also granted this to them on account of their strange and barbaric usage; on account of their instability concerning the faith, which is also not firmly based; and in order that they who are separated far from their former spouses would be more strengthened for chastity." For living with women naturally leads to the desire of sexual intercourse with them.

**CHAPTER 18:  
THAT CLERGYMEN MUST ABSTAIN FROM THEIR WIVES  
WHEN THEY ARE ABOUT TO HANDLE HOLY THINGS**

**CARTHAGE 3, 4, 28, 73**

The third canon of the Council in Carthage states that those who are assigned to be priests must pursue temperance, chastity, and every other virtue, always and in all things, in order that the pure approaching the Pure, acting in the capacity of mediators between

237. Isaak II Angelos, Emperor (1185–1195, 1203–1204); cf. Balsamon's commentary on Trullo 48, Rhalles and Potles, 2:420–23.

238. Rhalles and Potles, 5:321/–23.



God and man, might have their petitions granted. So that serving as envoys to God, the Latter is propitiated by them as much as possible, and peace for the world is petitioned. However, above all, when the season summons them for the preparation and partaking of the Divine Mysteries, being obliged to show forth in action the things of chastity, they must even abstain from sexual intercourse with their own spouses.

The fourth and twenty-eighth canons of this council, as well as the seventy-third, all obscurely pronounced, which order clergy who handle the Divine Mysteries to abstain from their partners, gave a pretext to the Latins to require those about to become priests to divorce their wives. If, therefore, these canons have such authority, they would be distinguished as more lawful than the sacred canons of the apostles and councils, because they openly teach things contrary to the latter. For the thirteenth canon of the Sixth Council mentioned in chapter two, which revokes this by greater authority, threatens excommunication for those who so think and act. Nevertheless, it determines that it is meet and blessed for those who are enrolled in the clergy to abstain from sexual intercourse with their wives at the time of preparing for the Divine Mysteries. The canon, which relies on the divine Paul, who states, "Do not deprive one another, unless this occurs by agreement, in order that you may have leisure for prayer and fasting,"<sup>239</sup> shows that fasting is at clearly determined times when one is about to partake of Consecrated Things, and that it is prayer with fervent tears which is enjoined, not that to which we have been commanded to devote ourselves unceasingly, for he says, "Pray unceasingly."<sup>240</sup> For long ago it was commanded of the Jews who were about to hear the divine utterances on the mountain not to go into a woman for three days.<sup>241</sup>

### DIONYSIOS 3

The third canon of the Hieromartyr Dionysios of Alexandria establishes that clergy are sufficient judges for themselves at the time they are about to approach the Fearful Mysteries to abstain from their wives. But they do so by common agreement, according to the saying of Paul the Great that "the husband does not exercise authority over his own body, etc."<sup>242</sup>

239. 1 Cor 7:5.

240. 1 Thess 5:17.

241. Exod 19:14ff. (LXX).

242. 1 Cor 7:4.

## TIMOTHY 5, 13

The fifth and thirteenth canons of Timothy of Alexandria exclude husbands and wives who were sexually united during the night from partaking of the Divine Mysteries the day after, when the Sacred Synaxis is celebrated. And putting forward the Apostle's passage mentioned before as a steadfast proof, he states, "Most certainly they must avoid intercourse (κοινωνίας) with one another during Saturday and Sunday, because at this time the Sacred Sacrifice is offered to the Lord."

**CHAPTER 19:**  
**CONCERNING BISHOPS OR CLERICS WHO HAVE**  
**SUBINTRODUCTAE (συνεισάκτους) WOMEN<sup>243</sup>**

## FIRST COUNCIL 3

The third canon of the First Council does not deem fit that a bishop or someone of the clergy have a *subintroducta* (συνείσακτον) woman, except a mother, sister, aunt, or only any such persons who have been free of suspicion.

## SIXTH COUNCIL 5

The fifth canon, which has made mention of this matter, taking care that the clergy not give an occasion of scandal, has entirely forbidden such men to have women or female slaves. It threatens the transgressor with defrocking. It also adds that there is every necessity for eunuchs if they might not wish to observe this, who scorn the consequent reproach, to be defrocked, when clergy, and excommunicated, when laymen.

## SEVENTH COUNCIL 18

The eighteenth canon of the Seventh Council requires those who are of the clergy to be inoffensive (according to the Apostle) not only to the faithful, but also to those who took no interest in matters of faith.<sup>244</sup> Therefore, on account of this, it is commanded that

243. Blastares used the term *subintroductae* (συνεισάκτους) to refer to female slaves or freewomen who live with clergymen and serve them (perhaps as housekeepers) in either residences or monasteries.

244. 1 Cor 10:32.

he who relies upon a female slave or freewoman for any service whatsoever in a bishop's residence or monastery, be subject to penitential discipline, and the one who persists, to be defrocked. This means that the bishop or abbot who departs for his own suburban estates, where women perform service, is to be served not by these, but by men. Until the bishop or abbot would withdraw from there, these women are to live in another place. However, if these clergy lodge at another's suburban estate or an inn, I think that it would be difficult for the stipulations of the canon to be observed.

#### ANCYRA 19

The nineteenth canon of the Council in Ancyra forbids virgin women to live with them as brothers.

#### BASIL 88

In reference to these things, the great trumpet of truth, Basil the Great, who sent a letter to a certain presbyter Gregory, in a rebuking manner upbraids him who devotes himself to such a passion.<sup>245</sup> Indeed, he states,

We have been neither the first nor the only ones to legislate that women not cohabit with men. But read the canon brought forth by our holy Fathers in the Council of Nicaea, which explicitly forbade women to be subintroductae (συνεισάκτους). The chasteness of celibacy consists in this, in having separated oneself from the society of women. Thus, if one who professes it in name, does in action the works of those cohabiting with women, it is clear that he professes the chasteness of celibacy in name, and does not abstain from unseemliness of pleasure. For I neither believe that a seventy-year-old man cohabits passionately with a woman, nor did we rule what we ruled as on the basis of some past outrageous act, but because we were taught by the Apostle, "not to place a stumbling-block or scandal in our brother's way."<sup>246</sup> We knew that what is purely done by some, will exist for others as an occasion for sin. On account of this, we who follow the command of the holy Fathers, ordered you to be separated from the woman. Therefore, expel her

245. St. Basil, *Letter* 55.

246. Rom 14:13.

from your house. Settle her in a monastery. Let her be with virgins, and let you be served by men, in order that the name of God not be blasphemed on account of us. Until you have done these things, the countless things which you write in letters, will profit you nothing, but while suspended you will die, and you will have to give the Lord a reason for your suspension. And if you dare, while not correcting yourself, to cling to the priesthood, you will be anathema to all the people; and those who receive you will become excommunicated throughout the whole Church.

It has come to be determined from this letter that the presbyter who cohabits with an unrelated woman must not be defrocked immediately, but only if after a command to depart from her, he does not wish to do so.

## LAWS

Most certainly, we do not allow a bishop to either have a woman or live with her. If he agrees with this, let her be expelled from the episcopal residence.<sup>247</sup>

Let no cleric who does not have a wife, have a *subintroducta* (ἐπεΐσακτον) in his house, except a mother, daughter, sister, and others above suspicion. If he were not to observe these things, after this was mentioned twice by the bishop or his fellow clergy, if he were to not expel her; or if after being accused, he were to admit to living unchastely with her, let him be defrocked.<sup>248</sup>

Let a bishop not cohabit with any woman whatsoever, nor let a female deacon cohabit with a man.<sup>249</sup>

## CHAPTER 20: CONCERNING THOSE WHO BATHE WITH WOMEN

### SIXTH COUNCIL 77

The seventy-seventh canon of the Sixth Council completely forbade the bathing of men with women in public baths as even

247. Justinian, *Novel* 123.29; *Basilika* 3.1.45, Scheltema, A1:101; Balsamon's commentary on Seventh Ecumenical Council 18, Rhalles and Potles, 2:629.

248. Justinian, *Novel* 123.29; *Basilika* 3.1.45, Scheltema, A1:101; *Nomokanon of Fourteen Titles* 8.14, Rhalles and Potles, 1:161.

249. Justinian, *Novel* 123.30; *Basilika* 3.1.46, Scheltema, A1:102; *Epitome legum* 8.28, Zepos, 4:327.

coming under condemnation amongst the pagans. It determines deposition to be the penalty for those clerics who do this, and excommunication for monks or laity.

### LAODICEA 30

This canon, without the penalties, is the thirtieth of the Council in Laodicea. For if a man who meets a woman while passing is in need of much zeal for his mind not to be infected by lust for her, the one who sees these women naked in a bath would hardly be able to avoid a scheme for sensual pleasure. Indeed, the adversary uses our reciprocal limbs as arrows against us. Therefore, is it not the most shameful of shameful things for naked men and women to be seen by each other, to inflame their lust for one another, and to kindle the burning of their flesh? Certainly the evil of it and the natural movement of this are enough for the body. What need is there of more chaff for the fire or more abundant food from the feasting of the eyes for the beast, that it becomes more difficult to constrain and more violent in thought? Otherwise, we would provide an occasion of scandal for many, we who were ordered not to place a stumbling block in the way of our brother and to be inoffensive to Jews, Greeks, and the Church of God. Indeed, married couples are not even permitted to do this. Although they have become one body and are each others' members, yet it is not necessary for one's own members to be used in an evil fashion.

### CHAPTER 21: THAT WOMEN MUST NOT BECOME *PRESBYTIDAS* (πρεσβύτιδας)

### LAODICEA 11

The eleventh canon of the Council in Laodicea did not think it fit that women become *presbytidas* (πρεσβύτιδας) according to the ancient custom, and preside over the other women in the Church by holding in regard to them the office of teacher.<sup>250</sup> Indeed, the Scriptures ordered women as a whole not to teach publicly, but to be silent and to be taught. I exempt from this Scripture those who are superiors of the rest of the women in monasteries. For the

250. Women who held the office of *presbytis* (πρεσβύτις) are described by Blastares as "the ones that bear the first places in the monastery"; see Letter M, Chapter 15: Concerning nuns, Sixth Council 45.

joining of diverse members after the manner of one body, through union and submission under God, of the rest of the women, grants them the place for a head.

#### **CHAPTER 22:**

#### **THAT WOMEN MUST NOT ENTER THE HOLY ALTAR**

The forty-fourth canon of the Council in Laodicea regards as out of place for the holy altar to be accessible to women, although previously it was approachable even for them. Certainly, if it has been forbidden to male laity, this must be more so for females. They have been excluded, as some say, by their involuntary monthly flow. See also chapter eleven of the present letter, and chapter six of Letter B.

#### **CHAPTER 23:**

#### **THAT WOMEN MUST BE SILENT IN CHURCH**

### SIXTH COUNCIL 70

The seventieth canon of the Sixth Council orders women to keep silent according to the voice of Paul the Great, not only at the time of the Liturgy, but also during every gathering (συνελεύσεως) of the faithful.<sup>251</sup> However, if they wish to learn something, let them ask their husbands at home. This also seemed fitting even to the pagans, for a certain one said: "Women, silence is becoming for women."<sup>252</sup>

#### **CHAPTER 24:**

#### **THAT WOMEN MUST NOT WEAR MALE CLOTHES**

### GANGRA 13

Nor did the thirteenth canon of Gangra leave unpunished women who had put on manly garments instead of customary feminine clothing, but it even gives them over to anathema. Indeed, he states, "let each one remain in whatever state each was called."<sup>253</sup> However, we know women who assumed this *schēma* on account of true asceticism and not because of hypocrisy, who completed many ascetic struggles, and attained the highest point of virtue. See also canon sixty-two of the Sixth Council in the third chapter of Letter E.

251. 1 Cor 14:35.

252. "Γύναι, γυναιξὶ κόσμον ἢ σιγὴ φέρει," Sophocles, *Ajax* 292.

253. 1 Cor 7:24.

**CHAPTER 25:  
THAT IT IS NOT NECESSARY FOR A WOMAN WITH  
CHILD TO KEEP THE CUSTOMARY FASTS**

TIMOTHY 8

The eighth canon of Timothy of Alexandria orders a pregnant woman during the Paschal lent not to keep the customary fast, but to revive herself as much as possible by partaking of wine and moderate foods. Indeed, the fast has been devised for the humiliation of the body. However, that which is feeble does not require training, but aid, in order to be strengthened and to gather its former vigor.

**CHAPTER 26:  
CONCERNING THE MAN WHO HAS A WIFE  
POSSESSED BY THE DEVIL**

TIMOTHY 15

Timothy of Alexandria in his fifteenth canon states, "He whose wife was possessed by a devil so as even to be bound in fetters made of iron, who, not being able to be chaste, would wish to divorce her, and take another for a wife, as I believe, has not escaped the accusation of adultery. But for those cases in which I do not have knowledge to speak with certainty, I have deemed it better to keep silent."

LAW

However, the novel of the emperor Leo the Wise has allowed the husband of a wife who is perpetually insane to dissolve the marriage and to be joined with another woman.<sup>254</sup> Except it orders the husband to endure her for a three-year period, and during this period not to dissolve the union with his insane wife. But the wife is not to be divorced from her insane husband unless a five-year period were to elapse. The novel of Nikephoros Botaneiates also

254. Leo VI, *Novel* 111 (Noailles, 360–67) and *Novel* 112 (Noailles, 366–73); Balsamon's commentary on Timothy of Alexandria's canonical responses (15), Rhalles and Potles, 4:340.

legislated this.<sup>255</sup> The law states that although insanity hinders marriage, it does not dissolve a well-established one.<sup>256</sup>

**CHAPTER 27:  
CONCERNING WOMEN IN MENSTRUATION, OR WHO  
ARE UNDERGOING A FLOW**

See chapter sixteen of Letter A.

**CHAPTER 28:  
CONCERNING WOMEN WHO TAKE DRUGS IN ORDER  
TO MISCARRY**

SIXTH COUNCIL 91

The ninety-first canon of the Sixth Council orders those women who either take or furnish drugs in order to miscarry, to suffer the penalties for murder. At any rate, some women who secretly have intercourse with men and who conceive, seek to deliberately destroy the embryos by drinking poison or even squeezing their bellies with a weight, so as to expel the dead from their wombs, in order that they are not condemned for fornication by either their parents or masters. Not only this, but sometimes they even destroy themselves besides.

ANCRYA 21

The twenty-first canon of the Council in Ancyra states, "Although the earlier decision excluded from Communion until the hour of their death those who take drugs for producing an abortion, we who create something more philanthropic, decided that two years was sufficient for their repentance."

BASIL 2

The second canon of Basil the Great decrees this period of ten years for such women.<sup>257</sup> He believes that their treatment is not determined by the length of time, but rather by the manner of re-

255. Nikephoros III Botaneiates, Emperor (1078–1081), *Novel* 24 (text lost); *Nomokanon of Fourteen Titles* 13.30, Rhalles and Potles, 1:331.

256. *Digest* 23.1.8; *Epanagoge* 14.14, Zepos, 2:271; *Basilika* 28.1.6, Scheltema, A4:1315; *Synopsis Basilicorum* M.15.4, Zepos, 5:425.

257. Blastares is referring to the penance decreed by canon 91 of Trullo.



penance. Because the Mosaic Law imposed a fine upon the man who struck a woman when an incompletely formed embryo was miscarried, and imposed capital punishment ordering him to die when the expelled was fully formed,<sup>258</sup> the saint, who remembered this, states,

We do not hold that there is a difference whether that which is expelled is formed or unformed. Indeed we do not impose a fine, but we accuse the woman who does this of murder, because of the destruction of the embryo and of she who has expelled it, for sometimes it happens that she dies along with the embryo. At any rate, the seed that is sown in the mother is first changed into blood, then becomes formless flesh, and then is fully shaped and formed into limbs and parts.

But at the end of the eighth canon, he states, "And they who give and they who receive the embryo-killing poisons are reckoned among those who murder voluntarily." However, here, the penalty for involuntary murder, the ten-year period, is applied to them, I believe, on account of their not yet having become pregnant in appearance, and the murder not being committed from a savage disposition, but because of shame or ignoble fear, perhaps of parents, a master, or some other who threatens danger.

## LAWS

She who aborts intentionally is exiled temporarily.<sup>259</sup>

The novel of Emperor Leo the Wise grants permission to a husband to sunder his marriage with a wife who on purpose aborts his own seed.<sup>260</sup>

He that has administered an abortion-causing drink, if of low rank, is condemned to hard labor in the mines; if of high rank, is banished with appropriate confiscation of his property. However, he is subject to the ultimate punishment, if someone died from the abortion-inducing drug, even if he administered it without guile.<sup>261</sup>

258. Exod 2:22–25 (LXX).

259. *Digest* 47.11.4, *Basilika* 60.22.4, Scheltema, A8:2913; *Nomokanon of Fourteen Titles* 13.10, Rhalles and Potles, 1:312.

260. Leo VI, *Novel* 31, Noailles, 122–27; Balsamon's commentary on Trullo 91, Rhalles and Potles, 2:520.

261. *Digest* 48.19.38 § 5; *Basilika* 60.51.35 § 5, Scheltema, A8:3082; *Nomokanon of Fourteen Titles* 13.10, Rhalles and Potles, 1:312.

**CHAPTER 29:  
CONCERNING A WOMAN WHO IS CARELESS  
CONCERNING HER CHILD OR WHO EXPOSES IT**

**BASIL 33, 52**

The thirty-third canon of Basil the Great, as well as the fifty-second, deem fit to subject to charges of murder a woman who gives birth during a journey and, being able to save her child, has not cared for it, even if another picking it up and showing philanthropy has spared the child's life; after she treated it with a brutal and inhumane intention, has conceived perhaps by fornication or adultery, and attempted in this way to conceal the sin. However, if it was not possible for her and the infant to survive in consequence of the difficulty of succour, or want of necessities, or being taken prisoner, or because while hiding in flight of the enemy she is in danger of being discovered if the infant cries, the mother is rather to be pardoned from punishment.

**LAW**

Not only the strangler murders the child, but also he who abandons the baby, does not feed it, and exposes the infant in public places for a mercy, which he does not have.<sup>262</sup>

**CHAPTER 30:  
CONCERNING THOSE WHO VIOLATE<sup>263</sup> VIRGIN WOMEN**

**APOSTLES 67**

The sixty-seventh canon of the Holy Apostles requires that the man who violates an unbetrothed virgin to be excommunicated (for surely one will not deny that he who violates a betrothed woman must be punished as an adulterer?) and not expel, but marry her, although she may happen to be of poor people, and may not belong to his own class.

262. *Digest* 25.3.4; *Basilika* 31.6.4, Scheltema, A4:1530; Balsamon's commentary on Basil 33, Rhalles and Potles, 4:176; *Epanagoge aucta* 47.1, Zepos, 6:192; *Synopsis Basilicorum* N. 3.1, Zepos, 6:441.

263. The literal translation of the Greek verb βιάζω is "to force" and reflects the Roman legal concept of *per vim stuprum* or *stuprum* that occurs through force (*vim*).

## LAWS

The law states, "He who makes a concubine out of a chaste woman must be compelled to take her in the communion (κοινωνίαν) of marriage."<sup>264</sup>

Therefore, as is fitting, the canon orders the offender to be excommunicated because of the force, but requires him to be legally joined with the virgin for her salvation.

The law<sup>265</sup> is shown certainly not to legislate in this manner concerning the force used in the act (ἐν τῇ περὶ βίας ἀγωγῇ).

## LAWS

For it states, "Let him that forces and commits *stuprum* with a maiden have his nose slit, also giving her a third of his property."<sup>266</sup>

He that has intercourse with a consenting virgin maiden, without the parents' knowledge, after the act becomes known if he wishes to take her for a wife and the parents also consent, let the contract take place. However, if the parents of the other party do not permit this, and if the one who committed the *stuprum* is wealthy, let him give one pound of gold to the violated maiden. However, if he is poor, let him give half of his property. But if he is completely destitute, after being beaten and sheared let him be exiled.<sup>267</sup>

The five-year time period for an accusation of adultery has no place in the case of *stuprum* which occurs by force, for it is prosecuted without time limitations, and moreover force is a public offense.<sup>268</sup>

264. *Digest* 25.7.3; *Basilika* 60.37.2, Scheltema, A8:2971–72; Balsamon's commentary on Holy Apostles 67, Rhalles and Potles, 2:86.

265. The "law" in this context refers to the civil law in contrast to the canons of the Church.

266. *Digest* 48.5.30 § 9; *Digest* 48.6.3 § 4; *Ecloga legum* 17.30, FBR, 10:236; *Ecloga privata aucta* 17.57, Zepos, 6:46; *Prochiron* 39.66, Zepos, 2:224; *Epanagoge* 40.53, Zepos, 2:364; *Basilika* 60.37.79, Scheltema, A8:2997; *Synopsis Basilicorum* Φ. 3.7, Zepos, 5:566; Michael Attaleiates, *Opus de jure* 35.132, Zepos, 7:476; *Ecloga ad Prochiron mutata* 19.13, Zepos, 6:268; Balsamon's commentary on Holy Apostles 67, Rhalles and Potles, 2:86.

267. *Institutes* 4.18.4; *Ecloga legum* 17.29, FBR, 10:236; *Ecloga privata aucta* 17.57, Zepos, 6:42; *Prochiron* 39.65, Zepos, 2:224; *Epanagoge* 40.56, Zepos, 2:364; *Basilika* 60.37.78, Scheltema, A8:2996–97; *Synopsis Basilicorum* Φ. 3.6, Zepos, 5:566; Michael Attaleiates, *Opus de jure* 35.131, Zepos, 7:476; *Ecloga ad Prochiron mutata* 19.12, Zepos, 6:267–68; Balsamon's commentary on Holy Apostles 67, Rhalles and Potles, 2:86.

268. *Digest* 48.5.30 § 9; *Epanagoge* 40.44, Zepos, 2:362; *Prochiron* 39.26, Zepos, 2:219; *Basilika* 60.37.29 § 9, Scheltema, A8:2983; *Synopsis Basilicorum* Φ. 3.2, Zepos, 5:566; *Nomokanon of Fourteen Titles* 9.30, Rhalles and Potles, 1:218.

**CHAPTER 31:  
CONCERNING WITCHCRAFT**

See the first chapter of Letter M.

## Letter K

### CHAPTER 28: THE ONE WHO HAS SEXUAL DREAMS DOES NOT RECEIVE COMMUNION

#### DIONYSIOS 4

In his fourth canon, St. Dionysios of Alexandria establishes that one's own conscience is an impartial judge for those who engaged in an involuntary flow during the night. For if, without any pre-existing passion whatsoever, the emission of the organ has occurred spontaneously, nature expelling it as an excretion, let him that suffered it approach unhindered to the Divine Communion. But if a passionate thought preexisted, and lingering over it with his mind, he induced a nocturnal fantasy, and in this manner the emission of the organ followed, or if this occurred by drunkenness or gluttony, such a man is not pure, not because of the flow of semen (for this is not impure because neither is the flesh, of which it is an excretion), but on account of the evil thought, the very thing that defiled his mind. Accordingly, he who has doubts in his conscience because of this has been deprived of boldness (*παρρησίας*). Thus, how will he that is affected in this manner approach God? For according to Paul the Great, "He that has doubts, if he eats, has been condemned."<sup>269</sup>

269. Rom 14:23.

ATHANASIOS<sup>270</sup>

Athanasios the Great, who writes the same things to a certain Ammoun, explains by the greatest proofs, showing that nothing created by God is by its own nature impure. Man, who is subject to natural excretions, is the work of his hands. Passages have been given to the animal, so that by each of these, a body discharges superfluity. Thus, the hairs of the head are emissions; also the liquids out of the nostrils and mouth; the excrements of the stomach; the sweat of the entire body; and the semen of the seminal passages. These excretions and voidings benefit the animal, and that which is held back appears to corrupt it. To the prudent, nothing is impure by its own nature. However, nothing is pure for those that have incurred defilement, but both their mind and conscience are manifestly defiled by sin and by not considering these things to be fitting. However, even children of physicians know that nature expels semen as a superfluity; and that there is not one sin when an emission is voided.

However, Basil the Great in the *Asketika*, after being asked whether a man who had experienced a sexual dream should dare to approach for Communion, answered, "But as for coming near Holy Things while in a condition of impurity, we are taught from the Old Testament that the condemnation is fearful. But if something greater than the temple is here, the Apostle will clearly chastise us, saying, 'For the one who eats and drinks unworthily, eats and drinks condemnation.'"<sup>271</sup> The saint called "impurity" not the seminal excretion, which no one, I believe, will absolutely avoid except perhaps if he were completely without feeling, but the evil desire (concerning which the Lord said, "He who looks at a woman," etc.).<sup>272</sup> When it has dominion, the sin of intention is brought to completion through assent, and both fantasy and the emission of semen take place afterward during the night.

## CONCERNING MASTURBATION

If the emission of semen by assent through a nocturnal fantasy is censured thus, the excretion that occurs completely awake

270. Athanasios the Great (c. 296–373).

271. St. Basil, *Short Rules*, 309; the text of the question is the following: "If things which are customary and according to nature come to pass for someone, ought he dare to come forward for communion of Holy Things?"; 1 Cor 11:29.

272. Matt 5:28.

through masturbation and not from a dream will be punished much more.

### JOHN THE FASTER

For John the Faster states,

Concerning the cleric who succumbed to the passion of masturbation, perhaps not fearing that on account of this alone he might be excluded from the priesthood, after first being penanced sufficiently let him then be counted worthy of the priesthood. However, if he has fallen into this after the priesthood, after being suspended from the priesthood for one year and being chastened with the customary penalties let him be restored to the priesthood. But if after his discerning of the sin, he were to commit it two or three times, after being deposed from the priesthood let him enter into the order of reader.<sup>273</sup> And a layman who acquires the shameful passion of masturbation is excluded from Communion for forty days, eating dry food during this time and performing forty-nine genuflections each day.<sup>274</sup> However, masturbation that takes place through the sexual relations of one man with another, produces twice as much sin inasmuch as two souls are defiled. Wherefore also, the doer of this receives double the penalty, and the amount of genuflections expands to one hundred with appropriate fasting.<sup>275</sup>

But so much concerning this matter. A flow of the penis that occurs from a disease of the kidneys, as for example those suffering from gonorrhoea (τῶν γονορροῦων) or stones, is absolutely free from blame. For although men suffering from gonorrhoea (οἱ γονορροῦοι) were reckoned impure by the Law of Moses, nevertheless in perhaps another way that Law reveals the diseases of the soul through bodily afflictions and censured voluntary acts through involuntary ones.<sup>276</sup> For if natural acts seem somehow to be impure, intentional lechery would then be much more. For the Law, which is a foreshadowing, trained the Jews in corporeal things beforehand just as children, in order to make them more fit for the reception of the spiritual and more perfect. It teaches us by these

273. John the Faster 10.

274. John the Faster 8.

275. John the Faster 9.

276. Lev 15:3 (LXX); Num 5:2 (LXX).

things to avoid even conversations with such persons, in order not to be defiled by the impurity of their words that pours forth from the mouth. These are the ones who very much endeavor to introduce their own sickness to all, after the manner of a pestilential disease, and to have many persons become like themselves, so that in the communion of evil they would escape (as they might believe) the rebuke of their disgrace. But our law does not at all admit the unhealthy, because also those suffering from leprosy were driven away even from the Jews' camp as impure ones.<sup>277</sup> However, those not at all impeded by disease are fellow members of the Church and pray with us.

### TIMOTHY 12

The twelfth canon of Timothy of Alexandria states,

If a lustful thought made an assault upon a man having a sexual dream, and after he lingered over it with his mind, a genital flow followed closely afterward, he must delay Communion. For assent defiled his thought. However, if none of these things preceded, it shows itself to be a trial of the devil who contrives to keep him away from the Divine Communion, but let the one who is not at all in doubt about this, approach for Communion. For if as a result, his not partaking of Sacred Things were to be brought about by the evil one, the latter will not cease laying snares whenever he finds the former preparing himself for the Divine Communion.

277. Ancrya 13; Lev 13 (LXX); Num 5:2 (LXX).



## Letter M

### CHAPTER 13: CONCERNING BETROTHAL

#### LAW

Let him who commits *stuprum* with his own betrothed before puberty, or before thirteen years of age, wait for the age of marriage if the girl's parents do not wish such a betrothal to be dissolved. However, if they wish to dissolve it on account of the *stuprum*, let such a betrothal be dissolved without hindrance, and let the one committing the *stuprum* give a third part of his own property to the girl's portion.<sup>278</sup> See also the fifteenth chapter of Letter Γ.

### CHAPTER 14: CONCERNING ADULTERY

#### GREGORY OF NYSSA 4

Gregory the Great of Nyssa states in his fourth canon,

It pleased some of the more accurate authorities to also deem the sin of fornication to be adultery, be-

278. *Ecloga aucta* 17.28, FBR, 3:73; cf. *Ecloga legum* 17.28, 17.31, FBR, 10:236; and *Basilika* 60.37.80–82, Scheltema, A8:2997–98; according to Laiou, this provision “derives, in a remote way, from *Procheiros Nomos* 39.65” (Angeliki Laiou, *Consent and Coercion to Sex and Marriage in Ancient and Medieval Societies*, 172, n. 30).

cause legal wedlock is the same both for a wife with a husband, and for a husband with a wife. Therefore, everything that is not lawful, is completely illegal; and he who does not have his own, clearly has that of another. For God gave one helper to man, and has fitted one head onto woman. Surely, if one were to acquire for himself his own vessel, as the Apostle uses the term,<sup>279</sup> the law of nature would allow its righteous use. However, if one were to turn from his own vessel, one would at any rate become involved with the vessel of another. For each man, any vessel which is not his own belongs to another, even if it does not have acknowledged ownership. Surely then, it was shown that fornication is not far from the sin of adultery, both by those who examined the question more closely, and when Divine Scripture states, "Be not intimate with another's woman."<sup>280</sup> But inasmuch as an indulgence, or economy and concession, was shown by the Fathers to the weaker, the offence was distinguished according to the following general distinction; one's satisfaction of lust which took place without injury of another was termed fornication, and that which occurred by treachery and with injury of another man was called adultery. And the universal cure of this sin is man's becoming pure by repentance from passionate folly for such pleasures. However, those that are defiled by fornication have not combined injury with this sin. On account of this, it was determined that the period of correction should be doubled for those defiled by adultery, inasmuch as their sin is twofold; one part, by the illicit pleasure, and the other, according to the combined injury of another. Therefore, while those defiled through fornication are deemed worthy of Communion by nine years of penitential discipline, the sin of adultery is doubled in time, being extended to eighteen years. However, in proportion to the disposition of the one who was defiled, the partaking of the Good may be allowed in either a longer or shorter time.

See also his first canon in the first chapter of Letter A.

279. 1 Thess 4:4-5.

280. Prov 5:20 (LXX).

**BASIL 58**

In his fifty-eighth canon, Basil excludes the adulterer from Communion for fifteen years.

**ANCYRA 20**

The twentieth canon of the council in Ancyra, which reduced the penalty of the adulterer and adulteress to seven years, deems them worthy to receive the Perfect after the completion of these years.

**APOSTLES 61**

The sixty-first canon of the Holy Apostles not only forbids the man who was manifestly convicted for adultery, fornication, or any forbidden act whatsoever, to enter into the priesthood, but prohibits him from entering the clergy at all.

**NEOCAESAREA 8**

The eighth canon of the Council in Neocaesarea decrees that it is not lawful for the husband of an adulterous woman to enter into a ministry of any degree whatsoever. However, it orders him who is a priest, whose wife committed adultery, either to be divorced from her or, if he does not wish to separate, to withdraw from the priesthood. Thus, being defiled by the intercourse of a woman who has incurred pollution, the man would not be worthy because he is impure to partake of the Pure and Holy Mysteries. Although it is possible for a husband to receive his adulterous wife without blame and to pardon the sin, this has not been allowed for those in the priesthood, according to the eighteenth Apostolic Canon, which orders him who cohabits with a disreputable woman not to be a priest. This is also seen in the fourth chapter of Letter Γ.

**BASIL 34**

Basil the Great states in his thirty-fourth canon,

Concerning women who have committed adultery and have confessed the sin on account of piety or fear of future judgement, or who were in any other way exposed perhaps by the swelling of the womb or even giving birth to the baby while their own husband was abroad, our Fathers said that one must not expose

these publicly by compelling them to pass through the places of penances (that of weeper, hearer, and kneeler), lest we cause their death by exposing them. Certainly, such a woman's husband, seeing her leave the Church with those in penance, not requiring more apparent evidence for himself of the marriage's violation, will immediately kill her. According to Solomon, "Full of jealousy is the anger of her husband."<sup>281</sup> For this reason, the Fathers ordered these women to stand among the faithful and pray together without Communion, until the period of repentance was completed.

In the thirty-seventh canon, "He who has committed *stuprum* with another's spouse or a woman betrothed to another, and after being separated from her lived with a wife; in the case of the first woman he shall be charged with adultery, and in the case of the second woman, who was free of a husband, he shall be blameless."

He states in the thirty-ninth canon, "A woman who lives with an adulterer is an adulteress," i.e., a woman who commits adultery with a man, and after the death of her legal husband, has intercourse with the adulterer by a so-called law of marriage. Indeed, such a woman is not permitted to live with this man, either by the Church's law or by civil law. And if she were not to withdraw from him, her sin is not absolved, even if she were to complete the period of penance.

## LAWS

He who is accused of adultery with a woman is not able to take her for a wife.<sup>282</sup>

We order all men punished who after finding their wives committing adultery do not divorce them. He that does not divorce his own adulterous wife is a brothel-keeper, but not if he merely has suspicions.<sup>283</sup>

However, at present, even after her condemnation, the husband is able to recover his adulterous wife from the monastery according to the 117th Justinian novel,<sup>284</sup> which states, "We order that the adulterous wife, who was subject to the proper penal-

281. Prov 6:34 (LXX).

282. *Digest* 2.26; *Prochiron* 7.24, *Zepos*, 2:138; *Epanagoge* 17.28, *Zepos*, 2:280; *Basilika* 28.5.12 (11), Scheltema, A4:1347; Balsamon's commentary on Basil 39, Rhalles and Potles, 4:185.

283. *Code* 9.9.2; *Nomokanon of Fourteen Titles* 1.32, Rhalles and Potles, 1:73.

284. This reference should be to Justinian, *Novel* 134.10.

ties, be placed in a monastery. However, if within two years, the husband wishes to take her back, we grant him the authority to do this and to cohabit with her, incurring no risk in consequence. Certainly, the marriage is not damaged because of the events which have occurred in the meantime. However, if the aforesaid period of time should elapse, or the husband before taking her back should die, we order that the wife be tonsured and take the monastic *schēma*.<sup>285</sup>

If the husband that accused his wife of adultery, should prove this, then, after being separated, we order that the husband acquire the *donatio ante nuptias* (πρὸς τῆ πρὸ γάμου δωρεᾶ) and the dowry.<sup>286</sup> Also, if he does not have children, it is decreed that such a husband receive as much as one-third of the amount of the dowry from the wife's other property. Thus, both the dowry and the penalty decreed by us are put under his authority. However, if there are offspring from her cohabitation, the husband obtains guardianship of the dowry and the wife's other property for the children. In this way, the legally convicted adulterer together with the wife are punished. Although, if the adulterer has a wife, the dowry and the *donatio ante nuptias* are saved for her, and the other property of the husband, if there are ascendants or descendants, is received by them up to the third degree. However, if none exist, this property is given to the public treasury.<sup>287</sup>

Let adulterers have their noses slit after being beaten and sheared. Let those who have become aiders and abettors of such impiety, be sent into perpetual exile.<sup>288</sup>

The thirty-second novel of Emperor Leo also decrees appropriate punishment for adulterers and adulteresses.<sup>289</sup>

285. Justinian, *Novel* 134.10; *Basilika* 28 7.1, Scheltema, A4:1358; *Nomokanon of Fourteen Titles* 1.32, Rhalles and Potles, 1: 73; *Nomokanon of Fourteen Titles* 13.5, Rhalles and Potles, 1:302–303.

286. The *donatio ante nuptias* (πρὸς τῆ πρὸ γάμου δωρεᾶ) was an antenuptial gift given by a prospective bridegroom to his fiancée; for general coverage of betrothal practices, see Jean Dauvillier and Carlo De Clercq, *Le Mariage en Droit Canonique Oriental* (Paris: Contant-Laguerre, 1936), 32–36; J. Zhishman, *Das Eherecht der Orientalischen Kirche* (Wien: Wilhelm Braumüller, 1864), 137–56, 603–68; Stavros Papadatos, *Περὶ τῆς μνηστείας εἰς τὸ βυζαντινὸν δίκαιον* (Athens: Publishing House of the Academy of Athens, 1984).

287. Justinian, *Novel* 117.8; *Prochiron* 11.7, Zepos, 2:147; *Epanagoge* 21.5, Zepos, 2:303; *Basilika* 28.7.1, Scheltema, A4:1357–58.

288. *Prochiron* 39.45, Zepos, 2:222; *Epanagoge* 40.51, Zepos, 2:364; *Basilika* 60.37.71, Scheltema, A8:2994–95; *Nomokanon of Fourteen Titles* 13.5, Rhalles and Potles, 1:302.

289. Leo VI, *Novel* 32, Noailles, 126–29.

The thirty-eighth novel punishes the adulterer and adulteress by the slitting of the nose, and decrees that the husband of the adulterous wife obtains the dowry, and she is confined to a monastery, and if unwilling is not tonsured. Her children and the monastery divide property beyond the dowry among themselves; or if there are no children, her parents, or otherwise those related by family ties.<sup>290</sup>

Adultery takes place not only by the *stuprum* of a legal wife, but also on account of an inadmissible and illicit marriage, betrothal, and concubinage.<sup>291</sup>

A husband that discovers an adulterer with his wife while they are having intercourse, if he happens to kill the adulterer, is not punished as a murderer. Certainly, the husband is able to kill the adulterer only in his own house, and if the latter is dishonorable or of the theatre. However, husbands are not permitted to kill their adulterous wives.<sup>292</sup>

Various laws decree that the adulterous wife be convicted in no other way than except by clear proof, i.e., by five witnesses swearing to have seen the adultery being committed in the act. Indeed, in this respect, no one can bring an accusation of adultery but five persons: the woman's husband, father, brother, paternal uncle, and maternal uncle, because in this way the motive for the inquiry becomes more trustworthy. If the accusers are unrelated and they prove their charge, the adulterers are punished by the slitting of the nose. However, if the accusations are refuted, having been made on account of enmity, the accusers are subject to the same penalty. But this woman, if confessing to be an adulterer, is not condemned at all (and this is something new).<sup>293</sup>

Let him who has two wives be beaten after the adventitious woman is expelled by him, along with the children born from her.<sup>294</sup>

He who attempts to have two wives, is subject to the charge of adultery, not by the law, but by the fact of his intention. He

290. The correct reference is to *Novel* 32; Balsamon's commentary on Trullo 87, Rhalles and Potles, 2:508.

291. *Nomokanon of Fourteen Titles* 13.5, Rhalles and Potles, 1:301–302; cf. *Basilika* 60.37.14, Scheltema, A8:2976–77.

292. *Prochiron* 39.42, Zepos, 2:221; *Epanagoge* 40.46, 47, Zepos, 2:363; Balsamon's commentary on Basil 34, Rhalles and Potles, 4:478.

293. *Code* 9.9.29; *Basilika* 60.37.67, Scheltema, A8:2993–94; Balsamon's commentary on Neocaesarea 8, Rhalles and Potles, 3:83; cf. Justinian, *Novel* 117.15; *Prochiron* 39.42, Zepos, 2:221; *Epanagoge* 40.47, Zepos, 2:363.

294. *Ecloga legum* 17.35, FBR, 10:238; *Epanagoge* 40.63, Zepos, 2:365; *Ecloga aucta* 17.13, FBR, 3:71; *Ecloga privata aucta* 17.31, Zepos, 6:44.

who has sexual relations with a freewoman, while his wife is living, is condemned as a fornicator. However, he who takes by marriage a second consortium (κοινωνίαν) for himself is punished as an adulterer.<sup>295</sup>

It is necessary to know that there are persons who sin and who are not punished. He who commits adultery with the wife of his freedman, and he who commits adultery with a married woman who is utterly corrupted and sleeps with many men, are not subject the charge of adultery, but only to that of fornication.<sup>296</sup> Although the man is punished as an adulterer, a wife is not punished when she was unwilling and overpowered by force, even if after being dishonored she did not immediately report what occurred to her husband.<sup>297</sup>

## CHAPTER 15: CONCERNING MONASTERIES AND MONKS

### FIRST AND SECOND COUNCIL 1

The first canon of the so-called First and Second Council stipulates that one is not allowed to build a monastery without the consent of the bishop, who first executes the customary prayer; that both the monastery itself and as many things as are donated for it by the builder, are recorded in a brief; and that the brief is given to the bishop, so that the donor is not able in any way hereafter to appropriate any of these things for himself. Because the one who dedicated these things to God through the monastery, separated himself from them, how is he then able to control these things as an owner, let alone also to sell them to others? Nor yet again is he permitted to appoint himself abbot of the monastery contrary to the bishop's wishes, nor choose another in place of himself. If it is not possible for one who gives to take back without a plausible cause what has been given to men, much less so can the donor appropriate for himself the ownership of what has been dedicated to God, because the dedication would be in name alone and not in reality.

295. *Prochiron* 39.70, Zepos, 2:225; *Epanagoge* 40.64, Zepos, 2:365; *Basilika* 60.37.83, Scheltema, A8:2998; Balsamon's commentary on Trullo 87, Rhalles and Potles, 2:509, 510.

296. *Code* 9.9.22–23; *Basilika* 60.37.61–62, Scheltema, A8:2992.

297. *Digest* 48.5.40 pr.; *Basilika* 60.37.39, Scheltema, A8:2986.

## FOURTH COUNCIL 24 AND SIXTH COUNCIL 49

The twenty-fourth canon of the Fourth Council, as well as the forty-ninth canon of the Sixth, order that monasteries, after having been established with the consent of the bishop (whose custom is to lay down a prayer prior to the building, as an unbreakable foundation), remain monasteries in perpetuity, that the property belonging to them be kept inalienable, and that they never become worldly dwellings. They order that those who do not observe this be punished. Priests are of course subject to defrocking, and laity to excommunication. See also canon seventeen of the Seventh Council in the twelfth chapter of Letter E.

The twentieth canon of this council<sup>298</sup> deems that henceforth double monasteries not be established, and that monks not dwell near monastic females. For this became a cause of scandal and offence to many. But to as many as it pleased to renounce the world together with their own families, they say, "let the men enter into monasteries of men, and women into those of women." The double monasteries that endure until even today, are to be regulated by the reverence of our divine Father Basil, who decreed to have things in the following manner, as that canon directs. Monastic females must not live together and associate with monks, inasmuch as this is harmful and illicit. Nor are they to have familiarity with them, nor to hold private conversations, to say nothing of eating with them alone. Regarding necessities of life that are brought to the canonesses (ταῖς κανονικαῖς) by men, the abbess shall receive these things with another old monastic female.<sup>299</sup> If it is deemed important that one of the monks see a monastic female related by blood, concerning a necessary matter, let him converse with her under the eye of the abbess by few and brief words, and let him depart quickly.

## FOURTH COUNCIL 4

The fourth canon of the Fourth Council establishes that it is not proper to build a monastery or oratory contrary to the will of the bishop of the city. Nevertheless, the canon orders those monks who pursue the solitary life sincerely and not in appearance, to observe quietness painstakingly, to devote themselves to prayer and fasting alone, and to persevere in the places in which they were as-

298. This is actually the twentieth canon of the Seventh Council.

299. Canonesses (κανονική) were consecrated virgins or widows; see G. W. H. Lampe, *A Patristic Greek Lexicon* (Oxford: Clarendon Press, 1961), 701.



signed. Certainly those living in this manner would be righteous enough to hold seniority over the other monks. Nevertheless, these submit to the local bishop, as in the case of the law for clergy, and they that depart to another eparchy do nothing sacerdotal without a bishop's commendatory or dismissive letter. Indeed, concerning those that abandon their own monasteries and come round the cities indiscriminately and in a disorderly manner, disturbing political and ecclesiastical affairs, the council orders them to be confined to monasteries even unwillingly, because they permit neither the divine things on their own part nor human things to be accomplished according to the proper order: worldly matters by the laity and matters dedicated to God by the monks and clergy (unless some perhaps would be entrusted by the bishop of the city with the necessary administration of political matters, inasmuch as in this case not being ignorant, they are more certain than the clergy or laity in handling these matters). The canon also orders that the superiors of monasteries receive no slave to be a monk contrary to the approval of his own master, lest the name of God be blasphemed, and that he who transgresses this decision, be excommunicated. Of course, the bishop of the city must provide the supervision required by the monasteries, in order that the monks' solitude not be thrown into disorder by the disturbance of matters belonging to them.

## SIXTH COUNCIL 43, 40

CONCERNING HOW THOSE WHO WISH TO BE  
TONSURED MUST BE ACCEPTED

The forty-third canon of the Sixth Council states,

It has not been forbidden to any Christian, even one who sins gravely, to pursue the monastic way of life, which inscribes in us with severity, as on a tablet, the life in repentance. For as a tablet, it describes repentance to us by its external *schēma*, life, and mores; and causes this to be remembered always. Neither let the multitude and burden of sin create despair within us, nor let any mood arise that hinders anyone in the fulfillment of this God-loving aim. For our Savior has said, "him that comes to me I will not cast out."<sup>300</sup>

300. John 6:37.

The fortieth canon states, "Although it is customary to make heirs of that blessedness, those that very early on steadfastly renounced the things of the world in order to devote themselves to God, yet they ought not be unexamined. Nor should the head of the monastery accept those choosing the monastic life who are perhaps under the the proper point of age. However, by the conspicuous expansion of piety, through the abundance of God's Grace, concerning one that is ten years old (to say nothing of he that is more than ten years old), let him not be rejected only if his manners are in harmony with the promise."

#### FIRST SECOND COUNCIL 5, 2

The fifth canon of the so-called First Second Council, determined that those who approach the monastic life should be tested for three years in the monastery while still clad in worldly dress. However, during this time, after exhibiting a worthy intention concerning the profession, under these circumstances they are to be clothed in the monastic *schēma*. For as we generally know, uncertain and untried renunciations cause damage to the good order of monks. At any rate, those that throw themselves hastily into the monastic life and abandon it afterward owing to the rigors and toil of asceticism, wretchedly turn back again to the sensual and material life. However, if one values things of piety and virtue so highly that certainty of future life already exists, even six-month's time will be sufficient. Let the completion of the *schēma* be deferred for those who have fallen into a grave illness, but not the examination of the things required. They state, "However, concerning those who act contrary to these things, both the abbot of the monastery and the one who entered; the former is deprived of office and assumes obedience, the latter is lead away to another monastery which relaxes nothing of strictness."

#### CONCERNING THOSE WHO HAVE BEEN INVESTED WITH THE MONASTIC *SCHĒMA* WITHOUT A BENEDICTION

If one should invest himself with the monastic *schēma*, both without benediction and within three years, he will be subject to great penalties if he would not be willing to take this off, because he plays with things that are not to be trifled with.<sup>301</sup> For he will be forced to be invested with it even unwillingly.

301. Compare St. John Chrysostom, *Homily 31.5*, PG 60:674.

The second canon of this council commands that no one tonsure or bestow the monastic *schēma* unless first the one is present who will have him in obedience whose spiritual salvation he will care for, himself previously being well-trained by good works in virtue and fit to also lead those under his authority to virtue.

CONCERNING THOSE WHO WERE TONSURED ON  
ACCOUNT OF ILLNESS OR BODILY INFIRMITY,  
ALTHOUGH HASTILY, OR CONCERNING THOSE WHO  
HAVE BEEN INVESTED WITH THE MONASTIC *SCHĒMA*  
WITHOUT A BENEDICTION

Nevertheless, concerning those who were tonsured on account of illness or bodily infirmity only in order to hence procure a reputation of piety, who remain again in their own house, and who take no care for ascetical labors and sufferings, the bishop shall establish these in discipline within a monastery, in which he will examine them. He that fraudulently tonsured him is to be defrocked as a transgressor of the divine canons and as a confounder of monastic good order. For on account of these uncertain and precarious tonsures, an injury is inflicted upon monastic life and it comes to pass that God is blasphemed. But concerning the one who near his last breath has his hair shorn as indeed is the custom for monks, although by only breathing it is believed that he is not dead and not at all understanding the things celebrated for him: he is neither able to strip off the monastic stole and once again put on the worldly one, nor, if he should not wish to be subject to the disciplines of the penalties, will he be permitted to live in the world. Nor again will this be allowed for those who were hastily invested with the monastic *schēma*.

SEVENTH COUNCIL 19

The nineteenth canon of the Seventh Council has absolutely forbidden those who propose to pursue the monastic life in a monastery to make their entrance into it or any other priestly rank by means of money. For one is not able to serve God and mammon.<sup>302</sup> According to Basil the Great, "And where the beginning is reprobate, the whole is also to be rejected."<sup>303</sup> The canon orders the bishop or abbot who brings this about to either cease or be

302. Matt 6:24.

303. St. Basil, *Concerning Fasting: Homily 2*, PG 31:192A.

defrocked. However, if the abbot has no share in the priesthood (for now and then they have been appointed from such men), he is to be expelled from the monastery and to be handed over to another for obedience. An abbess who dares such things shall also suffer this penalty.

Whatever things parents have granted to a monastery from the legacy of their children, it is not possible to take back. For these things are consecrated to God whether they remained in the monastery, or the donor withdrew them. Unless perhaps it should be the case that the abbot of the monastery returned it.

#### FIRST SECOND COUNCIL 6

The sixth canon of the so-called First and Second Council states,

Monks should have no personal property inasmuch as they are dead to the world on account of the life that has been hidden in Christ. For in this way, the blessed Luke established for us long ago clear principles that form the monastic way of life, "Not one of the believers said that any of the things which he possessed were his own, but they had everything in common."<sup>304</sup> Whence, it is permissible for those who wish to become monks both to dispose of their possessions and to send these things to persons who might want them, who have not been forbidden by law to receive them, as for example heretics or illegitimate children. For after becoming a monk, the monastery holds ownership of all their property, and it has not been permitted for them to bequeath or to consider anything their own. However, if one should be discovered making any property whatsoever his own, the abbot of the monastery, or the bishop of the region, seizing and selling it in the presence of many witnesses (guarding against slander on this account) shall distribute the proceeds to the poor and indigent. Let the one who considered taking such property secretly, after the manner of Ananias, be chastened with the proper punishments.<sup>305</sup> And let a convent of nuns be responsible for all these things as well.

304. Acts 4:32.

305. Acts 5:1-11.

## SIXTH COUNCIL 41, 42, 47

The forty-first canon of the Sixth Council deemed that it is completely perilous and hasty for those who have very recently withdrawn from a worldly way of life to immediately shut themselves up in a most narrow cell and to become teachers of the monastic life for themselves. For it is first necessary that their submission to obedience in a monastery full of brothers be demonstrated for three years. Next, they wait for another year, during which they choose to be enclosed. And after their decision is visibly proven to be steadfast (so that such men deliberately choose to live in this manner not perhaps on account of aiming at hollow glory, but at virtue), with the permission of the local bishop, they remain enclosed, and no longer leave their cell at all, except if they should be forced by some necessity; either for a common benefit of the people, or on account of a sickness, which declares the decree of death to be all but present, but even then, not without a decision of the bishop. For if they should then wrongly wish to leave, even unwillingly they must be forced into that cell, and confined as a precaution, so that departure is no longer easy for them. In addition, it is also necessary to subject them to fasts and afflict them with hardships, so that the fickleness of their decision should thus be healed. For the Savior said, "No one who puts his hand on a plough and turns back is fit for the Kingdom of God."<sup>306</sup>

## CONCERNING HERMITS

The forty-second canon orders those who call themselves hermits, who clothe themselves in black garments, who let their hair grow long, who dwell among men and women, and who insult their own promise either to remove their hair, take up a monastic *schēma*, and be enrolled with monks in a monastery, or if not choosing this, to be driven from the cities and to be driven into the deserts, from which they have falsely fashioned for themselves their name.

The forty-seventh canon orders neither women to sleep in a male monastery nor indeed men in a female monastery. For the faithful, and most of all the monks, must be above every scandal and offence, and must direct and regulate their own lives toward what is seemly and devoted to the Lord.<sup>307</sup> A sentence of excom-

306. Luke 9:62.

307. 1 Cor 7:35.

munication is given against both clergy and laity who enter into this manner of recklessness.

#### SEVENTH COUNCIL 22

The twenty-second canon of the Seventh Council punishes clergy and those that are leading the solitary life who eat privately with women, even if they are related to them by blood. However, if one must take women to be companions at table, it should not be otherwise than with God-bearing men and honorable and pious women being present at the same time, so that even this sharing of food and table would be toward spiritual profit. He states, "So whether you eat, or drink, or whatever you do, do all to the glory of God."<sup>308</sup> "All things are lawful for me, but not everything is expedient."<sup>309</sup> But we are even commanded to purify our thoughts, that is to say, to wash away or put down or overturn them, and prevent them from rising up against us. However, for one of these who is on a journey and does not know where to turn in, it has not been forbidden, only when his need requires it, to lodge chastely and with piety in an inn. Of course, men who live with women and children, and who live according to the world, are not forbidden to eat with women. For this has not been reproachable, if it were to take place with thanksgiving to God and not with theatrical entertainments, satanic songs, and lewd dancing, on which the prophetic curse falls, "Woe to them who drink wine with harp and psaltery," and the things that follow.<sup>310</sup>

#### CARTHAGE 38

The thirty-eighth canon of the Council in Carthage permits neither monks nor clerics to freely visit virgins or widows who are already consecrated to God, without permission of the bishop, or, if he is absent, of the presbyter. But even alone, they are not to meet with single women, but when either other clerics or honored and pious Christians are present so that every suspicion is removed. For the Apostle states, "Give no offence to Jews, Greeks, and the

308. 1 Cor 10:31.

309. 1 Cor 6:12; 10:23.

310. Isa 5:12 (LXX); the full quotation from Isaiah 5:11–12 (LXX) reads:

Woe to them that rise up in the morning and follow strong drink; who wait at it till evening; for the wine shall inflame them. For they drink wine with harp and psaltery, and drums and pipes; but they regard not the works of the Lord, and consider not the works of His hands.

Church of God.”<sup>311</sup> And moreover we have been commanded to avoid evil reputations, even if they are false.

#### SEVENTH COUNCIL 21

##### CONCERNING TRANSFER FROM MONASTERY TO MONASTERY

The twenty-first canon of the Seventh Council does not permit a monk or a monastic female to abandon his or her own monastery and depart to another. But when this so occurs, the canon prescribes by recommendation that it is necessary for that monk to be received as a guest, lest he should be forced to associate with worldly persons and those who live promiscuously. However, he is indeed not to be admitted without the approval of his abbot.

#### FIRST SECOND COUNCIL 3, 4

The third canon of the so-called First and Second Council places the abbot under excommunication if he should not diligently search for monks who flee from his own flock, and not lead them back to the sacred sheepfold, strengthening the ailing sheep with the appropriate treatment. For if the shepherd of dumb animals who is negligent concerning the flock necessarily suffers punishment, how will he who is charged with the salvation of Christ's sheep not have exacted from himself an inexorable punishment on account of personal carelessness concerning the smallest thing? But the recalled monk who refuses to return, no matter for which reason he left, shall be excommunicated by the bishop.

The fourth canon, with regard to the monk who flees his own monastery and has removed himself to another or indecently bursts in upon a secular inn, orders both him and the one who accepted him to be excommunicated until the deserter has returned to the monastery that he wrongly left. But if the local bishop, taking some of those monks honored for piety from their own monastery, should establish them in another for the leadership of the monastery (and both of the monasteries are clearly subject to him), or should determine that they direct a secular house, he does this blamelessly and the ones who receive the monks are blameless.

311. 1 Cor 10:32.

## CARTHAGE 80

The eightieth canon of the Council in Carthage requires that a bishop be punished who after accepting an alien monk, ordains him to a rank of the clergy or even appoints him abbot of his own monastery, without a letter of dismissal from his own bishop. The canon also orders others not to commune with the bishop that even just admits the monk to the communion of his own people, and it commands that the monk be excluded from the clergy or abbacy. See also the sixth chapter of Letter A, the twenty-third chapter of the same letter, the eighteenth canon of the Seventh Council in the nineteenth chapter of Letter Γ, and the twenty-ninth chapter of Letter E. In addition, see the thirty-third and twentieth chapters of Letter K, and the seventh canon of the Fourth Council in the thirty-second chapter of the same letter.

## GANGRA 13, 14

The thirteenth canon of the Council in Gangra gives over to anathema those who have children and on the pretext of asceticism renounce them, and do not practice the things of religion and of subsequent virtue, nor even provide the necessities of life to their offspring because of reckoning supposed piety and asceticism to be of the greatest worth, and considering it impossible for themselves to attain salvation in the world.<sup>312</sup> For Paul the Great states, "If anyone does not provide for his own relatives and especially his family, he has denied the faith and is worse than an unbeliever,"<sup>313</sup> and stipulating concerning widows he adds, "if she brought up children."<sup>314</sup> And he recommends that older women chasten the younger ones to be loving to their husbands and children.<sup>315</sup> And in other places he commands fathers to bring up their children in discipline and instruction of the Lord.<sup>316</sup> How marvellous it is that animals both nourish and attend to their offspring, and defend them to the death, but men in the meantime surpass even the savagery of animals. But it is not permitted for one who was already tonsured to leave the monastery on account of caring for children, and to sojourn in the world. For these are cared for by God, the Father of orphans, and Judge of widows and of their providence.

312. The canon is variously numbered as 13 and 15 in legal collections.

313. 1 Tim 5:8.

314. 1 Tim 5:10.

315. Titus 2:4.

316. Eph 6:4.



The fourteenth canon also deems worthy of anathema children who, on the pretext of asceticism, do not treat their own parents with honor, nor choose to care for them in their old age, but leave them alone uncared for, whether their parents are believers or unbelievers.<sup>317</sup> Yet it states that by all means one must prefer piety when unbelieving parents clearly attempt to draw their children toward their own impiety. However, the nineteenth canon states, "If one of those who are living a life of virginity supposedly for the Lord, should be arrogant toward married persons, let him be anathema."<sup>318</sup>

## CONCERNING NUNS

### SIXTH COUNCIL 45

The forty-fifth canon of the Sixth Council forbids those women about to be tonsured who are adorned with splendid garments to approach the altar, and there that nonsense to be stripped off, and the vestments of monasticism to be put on. For this stirs up confusion in the soul that is withdrawing from the pleasures of the world.

The forty-sixth canon requires those women that choose the monastic life to remain cloistered in the monastery. However, when urgent need requires it, they may go forth with the blessing and permission of the superior. Yet even then, not alone, but accompanied by *presbytidon* (πρεσβυτίδων) or the ones that bear the first places in the monastery, especially if these women occupy a young age, which is a snare not easily stepped over by unguarded eyes. And as for these women themselves, besides the easily erring nature of female thought, youth also contributes a great part to depravity. But the canon does not at all allow them to remain outside of the monastery at night. Indeed, monks, when a need requires it, with the blessing of the abbot, are not forbidden to go forth by themselves, and in addition, sometimes to pass the night outside of the monastery. However, these things have been stated concerning women held in suspicion on account of their youth, not of those free from suspicion because of old age and virtue.

317. The canon is variously numbered as 14 and 16.

318. The contents appear to be those of canon 10, but may indicate also a variant numbering.

## CARTHAGE 44, 123

The forty-fourth canon of the Council in Carthage commands that sacred virgins who were separated from their fathers, under whom they were guarded in safety, through the providence of the bishop, or of the presbyter when the former is absent, be given over for cohabitation with the most honorable women, or to live together with the younger women at the same place. So that living together they would be able to perpetually watch and observe one another, lest by going about here and there, they would damage the reputation and good order of the Church. The cohabitation of both young men and young women in one house has been neglected by us, but among the Latins it is still maintained.

The 123rd canon assigns to the bishop and him alone, the giving of the veil to maidens, but not before their twenty-fifth year, except by necessity. This is commanded by the already discussed fortieth canon of the Sixth Council, which directed that both males and females be tonsured at ten years of age.

GANGRA 15<sup>319</sup>

The fifteenth canon of the Council in Gangra submits to anathema those women who cut off their hair on account of reputed piety, because they renounce the symbol of their submission. Thus, the Apostle states somewhere that, "a woman ought to have authority or hair on her head, clearly the sign of her submission to man,"<sup>320</sup> and again, "If it is shameful for a woman to be shorn or shaved, let her be veiled,"<sup>321</sup> and, "If a woman wears her hair long, it is her glory, because long hair instead of a veil has been given to her."<sup>322</sup> For nature, which also recognizes long hair as proper for women, does not make them bald at all. Nevertheless, she that chooses the monastic life, even when her husband does not consent, shall be tonsured.

CONCERNING MONKS AND MONASTIC  
FEMALES WHO LAPSE

## ANCYRA 19

The nineteenth canon of the Council in Ancyra determines that those men and women that made a profession of virginity (but

319. The canon is variously numbered as 15 and 17.

320. 1 Cor 11:10.

321. 1 Cor 11:6.

322. 1 Cor 11:15.

were still clad in lay dress, who certainly did not receive and renounce monastic robes), who had broken their promise, and who turned toward legal marriage, are subject to the canon and punishment of digamists.

#### BASIL 6, 18

Basil the Great states in his sixth canon,

One must not reckon as marriage, the fornications of canonical persons (τῶν κανονικῶν), namely of clerics, monks, and those abstaining from the female sex. For these will also not be marriages according to the civil law among us which states that "the man that has relations with a free woman that does not derive a profit from her own body, appears to have a spouse, not a concubine."<sup>323</sup> But one must by all means dissolve their coition (συνάφεια), although they prefer to partake of pleasure because they have fallen from honor. For this will also be advantageous to the Church when others are prevented from attempting such things, and will not give the heretics the pretext that we have won men from another religion to ourselves by granting them permission to sin, permitting them to abide in sin and not forbidding unlawful marriages.

He states in his eighteenth canon,

Although the Fathers in Ancyra have decided that women who lapsed after making a promise of virginity are to be punished in the same fashion as digamists, because by the Grace of God the Church has grown stronger, it is fitting for these to be punished as adulteresses (Basil furnishing his own reason from various proofs). However, we say regarding those women who exceed sixteen or seventeen years of age that they have voluntarily vowed celibacy, earnestly proposing to renounce marriage. Not indeed those whom parents or other relatives put forward, seeking in this way something worldly for themselves, perhaps not being able to pay a dowry for them. One must not readily accept these women that are certainly not innerly disposed, until we shall have clearly examined their own personal inclinations. But it is not customary for this to occur in the

323. *Digest* 23.2.24; *Basilika* 28.4.13, Scheltema, A4:1327.

case of nuns and female ascetics. For even if at a very tender and holy age, less than that which is stipulated, they renounced worldly hair, their vow shall be firmly established for the future.

He states in his nineteenth canon,

We did not recognize the vows of men, except some that had enrolled themselves in the order of monks who appeared to accept celibacy by their silence. But it was proper for them to be questioned and to openly vow celibacy, so that if they broke their vow, they would be punished as fornicators. But also monks that do not make such a vow, who have only become wearers of rags (ῥακενδύται), are not able to change their clothes and enter into a marriage.

He requires in canon sixty that the woman who vowed virginity and broke her promise fulfill the term of the sin in the case of adultery, namely, fifteen years. He states, "Let the same also occur in the case of monks."

But also the sacred Chrysostom<sup>324</sup> states in his second letter to Theodore,

For if the one who has been joined to the Heavenly Bridegroom divorces Him and joins himself to a woman, this affair is adultery, even if you call it marriage ten thousand times. But rather this is even worse than adultery by how much God is greater than man. For if the wife has no authority over her own body, but the husband does, by how much more they who live in Christ must not be themselves masters of their own bodies.<sup>325</sup>

#### SIXTH COUNCIL 44

The forty-fourth canon of the Sixth Council acting in a more merciful way orders that the monk caught in fornication, who after-

324. St. John Chrysostom (347–407).

325. PG 47:312–313; the quotation is actually a series of excerpts, concerning which the following note appears in Rhalles and Potles, 6:392, "This is not found in the codices examined by us, except B alone," [B = William Beveridge, *Συνοδικὸν sive Pandectae Canonum SS. Apostolorum et Conciliorum ab Ecclesia Graeca receptorum; nec non Canoniarum SS. Patrum Epistolarum: Unà cum Scholiis Antiquorum singulis eorum annexis, et scriptis aliis huc spectantibus; quorum plurima Bibliothecae Bodleianae Aliarumque MSS. Codicibus nunc primum edita: reliqua cum iisdem MSS. summâ fide et diligenti collata* (2 vols.; Oxford, 1672)].

ward submits to repentance and confession, is to be punished no more than they who commit fornication. Moreover, I think that this canon suitably prevails because it is later than the others. See also the eleventh chapter of Letter Γ, canon four of the Fourth Council in chapter twelve of Letter Δ, and canon seventeen of the Seventh Council in chapter twelve of Letter E.

## LAWS

Let the alienation of a monastery not take place, whereby its sacred status is converted to private use. Otherwise, bishops have the power to protect and restore them to their former status.<sup>326</sup>

From the 131st Justinianian novel, you should know that in monasteries, the regulations (τυπικὰ) made by the founders ought to be kept, except if they contradict the canons. For it is not possible for the founders to deprive the local bishops of canonical rights in monasteries founded by them. Archpriests who build monasteries are able neither to oblige under penalty the archpriests that succeed them, nor to possess a lawful claim of any sort to these monasteries. For the irregular excommunication returns to their heads.<sup>327</sup>

## HOW THE BISHOP APPOINTS AN ABBOT

Let the bishop not select an abbot or archimandrite completely on account of his rank, but let him be the one whom all the monks or those that enjoy a good reputation shall choose, stating in the presence of the Gospels that they did not select him on account of friendship, but because they know him to be orthodox, wise, worthy of governing, and able to maintain the discipline of the monks and the order of the monastery. Let the same things also apply concerning women's monasteries and hermitages.<sup>328</sup>

## NOVEL

The 123rd novel states, "In all the monasteries that are called cœnobia, we order that, in accordance with the monastic canons,

326. Justinian, *Novel* 120.7; *Epanagoge* 10.11, Zepos, 2:259; *Basilika* 5.2.9, Scheltema, A1:136–37; *Nomokanon of Fourteen Titles* 11.1, Rhalles and Potles, 1:248.

327. This text does not appear in Justinian's novel, but is similar to a note on a commentary relating to this legislation contained in *Nomokanon of Fourteen Titles* 2.1, Rhalles and Potles, 1:88–89.

328. Justinian, *Novel* 123.34; *Basilika* 4.1.2, Scheltema, A1:112; *Nomokanon of Fourteen Titles* 11.3, Rhalles and Potles, 1:255.

all live in one house and take meals in common, and that all sleep separately in one house, in order that they might provide testimony of the chaste conduct of one another. All these things are also to be applied concerning women's monasteries."<sup>329</sup>

The fifteenth chapter of this novel states,

A woman shall absolutely not enter a men's monastery, nor a man enter a women's, whether under the pretext of the commemoration of someone that died and is buried there, or for any other reason. Not even if it should be alleged that he or she happens to have in the monastery a brother, a sister, or some member of his or her family. For no relationship exists on earth for monks who strive after the celestial life. And let neither men be laid in tombs in female monasteries, nor women buried in male monasteries, in order that an opportunity might not be created by nature for itself, to do what is not lawful, both to act licentiously and to make sport, and to dishonor the divine things.<sup>330</sup>

But if even a woman is about to be buried in a female monastery (for we do not judge it to be lawful for a man to be buried there), only the gravediggers and the men bearing the bier enter the monastery. And the nuns remain in their own cells. Only the doorkeeper and abbess, if she so desires, may be present for these events. And those men, after quickly completing the funeral rites, shall leave promptly, without seeing any of the nuns or being seen by them. Prayers are offered afterward on the third day, the ninth day, as indeed it is the law in respect to those who have died, and then the fortieth day and the remaining memorial services are also celebrated at the stipulated times. If the monastery is female, women perform all the services. However, if male, men perform them.<sup>331</sup>

We order that there not be many entrances to the monastery, but perhaps one or two, and that men who have grown old and wise shall be stationed at the door, who will neither permit any to leave the monastery without the approval of the abbot, nor permit

329. Justinian, *Novel* 123.36; *Basilika* 4.1.4, Scheltema, A1:113; Balsamon's commentary on Carthage 44, Rhalles and Potles, 3:410–11.

330. These are actually the contents of Justinian, *Novel* 133.3; *Basilika* 4.1.19, Scheltema, A1:120; Balsamon's commentary on Trullo 47, Rhalles and Potles, 2:417–18.

331. Justinian, *Novel* 133.3; *Basilika* 4.1.20, Scheltema, A1:120–21; Balsamon's commentary on Trullo 47, Rhalles and Potles, 2:419.

those outside to have access to the monastery with impunity both by night and by day.<sup>332</sup>

If it were to be known that the one entering into monastic life lies under no servile condition, as soon as the abbot shall approve, let him be clothed with the monastic *schēma*. However, if it is not known, let him be tried for three years, and if he is judged worthy, let him who is suspected of suffering from nothing dire, be tonsured.<sup>333</sup> However, if a disturbance were to occur after these things, see also the law in the twelfth chapter of Letter Δ.

By the care of the bishop, let neither monks nor nuns wander through the cities, but let them send their answers through *apocrisarii* (ἀποκρισιάρῳν) while remaining in their monasteries.<sup>334</sup> See also the seventh chapter of Letter K.

If one of the monks that left the monastery were to embrace a worldly life, after first being stripped of office and honor (if he possessed anything) by the local bishop and archon, with what things he acquired let him in turn even involuntarily be returned to the monastery.<sup>335</sup>

They who enter the monastic life neither serve as curators nor serve as tutors nor plead the cases of others (not even if the ones that have the case are relations), except only in behalf of their own monastery, and then by the approval of the abbot.<sup>336</sup>

If a monk should leave his own monastery and enter another, we order that if he appeared to have any possessions at the time when he had left, these things belong to the first monastery that he had entered.<sup>337</sup>

We forbid parents to remove their children from holy monasteries when the latter choose the monastic life, or to exclude them from their own inheritance, even if some reason before the monastic life was the basis for this.<sup>338</sup>

332. Justinian, *Novel* 133.1; *Basilika* 4.1.17, Scheltema, A1:118–19.

333. Justinian, *Novel* 123.35; *Basilika* 4.1.3, Scheltema, A1:113; *Nomokanon of Fourteen Titles* 9.32, Rhalles and Potles, 1:222; Balsamon's commentary on First and Second Council 5, Rhalles and Potles, 2:667.

334. Justinian, *Novel* 123.42; *Basilika* 4.1.13, Scheltema, A1:117; *Nomokanon of Fourteen Titles* 11.4, Rhalles and Potles, 1:257; *apocrisarii* (ἀποκρισιάρῳν) were stewards of the monastery: see "ἀποκρισιάρῳς," in G. W. H. Lampe, *A Patristic Greek Lexicon* (Oxford: Clarendon Press, 1961), 198.

335. Justinian, *Novel* 123.42; *Basilika* 4.1.14, Scheltema, A1:117; *Nomokanon of Fourteen Titles* 9.32, Rhalles and Potles, 1:222.

336. Justinian, *Novel* 123.5, 6; *Epanagoge* 9.15, Zepos, 2:255–56; *Basilika* 3.1.11, Scheltema, A1:86.

337. Justinian, *Novel* 123.42; *Epanagoge* 9.11, Zepos, 2:255; *Prochiron* 24.4, Zepos, 2:173; *Basilika* 4.1.13, Scheltema, A1:117.

338. Justinian, *Novel* 123.41; *Basilika* 4.1.12, Scheltema, A1:116; *Nomokanon of Fourteen Titles* 9.32, Rhalles and Potles, 1:223–24.

Let the one about to enter the monastic life dispose of his property before his entrance, because all his possessions are made over to the monastery (although he may not expressly intend to bring them in) and he will no longer in any manner be considered owner of them.<sup>339</sup>

Concerning the man who has children and is becoming a monk: after becoming one, he is able to divide his estate among his own offspring, keeping a portion for himself, which belongs to the monastery.<sup>340</sup>

If he who became a monk should die intestate, then his children shall receive the inheritance *ab intestat*, that is to say, one quarter of the inheritance, and the rest is given to the monastery.<sup>341</sup>

A novel of the Emperor Leo orders that a ten-year-old child can enter a monastery, according to the canon of the Sixth Council already discussed, and receive the monastic *schēma*, yet not also dispose of his property until attaining his sixteenth or seventeenth year. He states, "For I believe that also on account of this, Basil the Great determined this age in his ascetical book, because there is no hindrance of age in this case to disposing of one's goods."<sup>342</sup>

Work for monks must be twofold, either being occupied with the Scriptures and always studying them, or pursuing handicrafts that are suitable for monks. For an idle mind produces nothing good.<sup>343</sup>

A layperson, and especially an actor or whore, who makes use of or imitates the monastic and holy *schēma* is corporally punished and exiled by bishops and archons. He that would be inclined to ridicule any kind of ecclesiastical discipline is also punished in like manner.<sup>344</sup> See the thirty-third chapter of Letter E. See also the thirteenth chapter of Letter E.

339. Justinian, *Novel* 5.5; *Epanagoge* 9.9, Zepos, 2:255; *Prochiron* 24.2, Zepos, 2:172.

340. Justinian, *Novel* 123.38; *Epanagoge* 9.10, Zepos, 2:255; *Prochiron* 24.3, Zepos, 2:172–73; *Nomokanon of Fourteen Titles* 11.1, Rhalles and Potles, 1:251.

341. Justinian, *Novel* 123.38; *Epanagoge* 9.10, Zepos, 2:255; *Prochiron* 24.3, Zepos, 2:173; *Nomokanon of Fourteen Titles* 11.1, Rhalles and Potles, 1:251.

342. Leo VI, *Novel* 6, Noailles, 32–35.

343. Justinian, *Novel* 133.6; *Basilika* 4.1.24, Scheltema, 1:124.

344. Justinian, *Novel* 123.44; *Basilika* 4.1.16, Scheltema, 1:118.



# Letter T

## CHAPTER 4: CONCERNING THE CHILDREN OF CLERGY

### CARTHAGE 35

The thirty-fifth canon of the Council in Carthage does not deem fit that bishops and clergy should swiftly grant emancipation (τὸ αὐτεξούσιον) to their children, unless the latter might give assurance by their age and good manner of living that they will be able by themselves to administer their affairs suitably and piously.

### LAWS

The laws order that the emancipation of children not be done by the father alone, whether clergy or laity, unless also a judicial decision might confirm it. For they state, "Mere consent of the father does not free the child from his dependence, but a legal action does free him."<sup>345</sup>

The emancipation of the children of bishops, who are honored with offices, takes place through the law, and their fathers are not to give testimony in their behalf. For the eighty-first novel of Justinian states that all dignitaries and archons holding office

345. Justinian, *Code* 8.48.3; *Basilika* 31.3.3, Scheltema, A4:1524; Balsamon's commentary on Carthage 35, Rhalles and Potles, 3:397.

shall be emancipated, even if they were not previously released by a paternal hand.<sup>346</sup>

Nevertheless, perhaps the fathers bear the penalty of the spiritual wrongs that their dependent children commit, assuredly not also the penalty of the criminal wrongs. For fathers are not punished on their children's behalf. For the law states, "The sins result from the head."<sup>347</sup>

**CHAPTER 5:  
CONCERNING HOLY LENT AND THE CUSTOMS THAT  
ARE PRACTICED DURING IT<sup>348</sup>**

**THAT MARRIAGES AND ANY SUCH FESTIVITIES ARE  
NOT CELEBRATED DURING THE FORTY DAYS**

Why should there be weddings and marriage celebrations for those who bear arms? Or is it permitted for them to take pleasure in feasts and festivals? Far from it. It is not fitting that one should be certain of any such thing, certainly not even us in our wrestling with demons.

346. Justinian, *Novel* 81; cf. *Basilika* 31.5.1, Scheltema, A4:1528; *Nomokanon of Fourteen Titles* 1.36, Rhalles and Potles, 1:77 (the commentary of which either summarizes or makes reference to a *Basilika* text that is no longer extant).

347. The passage is derived from Balsamon's commentary on Carthage 35 (Rhalles and Potles, 3:398), where "law" most likely refers to the canon and the citation, actually a paraphrase of the canonical text.

348. An excerpt.

## Letter Φ

### CHAPTER 8: CONCERNING WOMEN WHO MURDER YOUNG ONES BY MEANS OF DRUGS

See the twenty-eighth and twenty-ninth chapter of Letter Γ, and canon twenty-five of the Council in Ancyra in chapter nine of the same letter, besides "Concerning involuntary homicide" and "Concerning infants that suffocated lying next to their parents."

Those cases are numbered among involuntary homicides whenever some babes are suffocated that sleep during the night between their parents, who from carelessness roll over and weigh down on them, whether through satiety of the stomach or drunkenness. And they observe penitential discipline for seven years, propitiating God both by the eating of dry food and the bending of the knees; and they shorten the stipulated years by weeping and with almsgiving (ἐλεημοσύνης) according to their ability, even obtaining pardon by contracting a fatal disease.

However, if this clearly occurred by a plot of the adversary, when the parents have not sinned at all, although the occurrence merits pardon, there certainly is need even of moderate penances. For it seems that this abandonment by the Lord who guards children has taken place on account of other sins for which no repentance took place. For He states, "Let not your foot be moved nor the angel that guards you slumber."<sup>349</sup>

349. Ps 120:3 (LXX).

However, if the suffocated babe is also unilluminated, it is also necessary that the outlay of almsgiving be augmented with penances.

## LAWS

Homicide is considered on the basis of the intention, whether one had or did not have the aim to kill. For this reason, it is possible to find that even the one who struck a blow, but who did not kill, is punished as a murderer; and the one that killed, if he only wished to strike, is not punished as a murderer. Such an intention is determined on the basis of the instrument used to strike. And in the case of the honorable man who murders, the penalty of voluntary homicide is deportation or complete confiscation of property. But in the case of villainous persons, the penalty is submission to the sword and beasts. In the case of the one who kills owing to stupidity or negligence, the penalty is five years' exile. Pardon has been given in the case of involuntary homicide.<sup>350</sup>

The law concerning homicides requires treachery and not great carelessness. For this reason, if someone who hurls either a stone or a branch from the top of a tree should kill anyone, he is not subject to the present law.<sup>351</sup>

Neither an infant (*ἰνφανς*), that is to say the seven-year-old, nor a madman who murder are subject to the law concerning homicides.<sup>352</sup>

The man that is ordered to kill by anyone is punished as a murderer.<sup>353</sup>

It is necessary to seek in all accusations whether one did wrong purposely or by chance; and thus whether to impose the punishment according to the law or a milder one.<sup>354</sup>

The kinsman who kills his own ascendants or descendents is given over to fire.<sup>355</sup>

350. *Nomokanon of Fourteen Titles* 9.26, Rhalles and Potles, 1:200; cf. *Digest* 48.8.1; *Basilika* 60.39.1, Scheltema, A8:3003–3004.

351. *Digest* 48.8.7; *Basilika* 60.39.5, Scheltema, A8:3005; Balsamon's commentary on Trullo 91, Rhalles and Potles, 2:520.

352. *Digest* 48.8.12; *Epanagoge* 40.85, Zepos, 2:367; *Prochiron* 39.80, Zepos, 2:226; *Basilika* 60.39.8, Scheltema, A8:3006; *Ecloga ad Prochiron mutata* 21.13, Zepos, 6:270.

353. *Basilika* 60.39.11, Scheltema, A8:3007.

354. *Digest* 48.19.5 § 2; *Basilika* 60.51.5 § 2, Scheltema, A8:3071; Michael Attaleiates, *Opus de jure* 35.196, Zepos, 7:482.

355. *Digest* 48.9.9; *Epanagoge* 40.37, Zepos, 2:362; *Prochiron* 39.35, Zepos, 2:220; *Basilika* 60.40.8, Scheltema, A8:3013; Michael Attaleiates, *Opus de jure* 35.156, Zepos, 7:478.

The man who kills an attacker who endangered his life is innocent.<sup>356</sup>

If one should kill a thief in the night, then he remains unpunished when he was not able to spare him without personal endangerment.<sup>357</sup> See also the fifth chapter of Letter Α, and the twenty-ninth chapter of Letter Γ.

#### A NOVEL OF ATHANASIOS<sup>358</sup>

The novel of the holy Patriarch Athanasios and the venerable Emperor Andronikos<sup>359</sup> determines that only the man himself caught in murder is punished according to the laws, but his children who did not share in the murder are not subject to penalties. But when his property is divided according to the number of his own children, the novel also assigns one portion to the one who was murdered, and especially if his spouse was in poverty, and he left both a wife and children. However, only the murderer's portion is assigned to the public treasury.

And the one who kills the infant (τὸ νήπιον) is subject to the penalty of murder.<sup>360</sup>

See also the two novels of Emperor Constantine Porphyrogennotos<sup>361</sup> concerning the quality of murder, which also legislate different penalties, and that no one should expel and drag off freely those who flee to the Church for refuge from murderers.<sup>362</sup>

356. *Code* 9.16.2; *Epanagoge* 40.41, Zepos, 2:362; *Prochiron* 39.39, Zepos, 2:220; *Basilika* 60.39.14, Scheltema, A8:3007; Balsamon's commentary on Basil 43, Rhalles and Potles, 4:191.

357. *Digest* 48.8.9; *Epanagoge* 40.4, Zepos, 2:360; *Prochiron* 39.4, Zepos, 2:216.

358. Athanasios I, Patriarch of Constantinople (1289–1293, 1303–1309); a fragment of the *Novel* in question is found in Rhalles and Potles, 5:124–25.

359. Andronikos II Palaeologos, Emperor (1282–1328).

360. *Code* 9.16.7; *Epanagoge* 40.14; *Prochiron* 39.12, Zepos, 2:217; *Basilika* 60.39.20, Scheltema, A8:3008.

361. Constantine VII Porphyrogennotos, Emperor (945–959).

362. Rhalles and Potles, 5:256–60.



## Letter X

### CHAPTER 4:

WHAT SORT OF MEN MUST BE THOSE WHO ARE  
ORDAINED BISHOP, AND WHAT THINGS BEFORE ALL  
ELSE SHOULD BE KNOWN

### SEVENTH COUNCIL 2

The second canon of the Seventh Council commands that it is very useful for one about to be elected and raised to the rank of bishop to know the Psalter above all, to be instructed in it, to chant more than others, and to teach his own people; and to be soundly questioned by his own metropolitan whether he is eager to study the sacred canons, the Holy Gospel, the Book of the Divine Apostle, and all Divine Scripture searchingly and not in a passing manner; and to pick out its meaning with zeal, to live it according to Divine Scriptures' commandments, to strongly persuade other men to do these things, to be prepared with a defence for all who demand reasoning concerning the hope among us, and to prepare minds under his direction to be suited for this. For the essence and constitution of our hierarchy are the divinely transmitted Scriptures, as Dionysios the Great declared.<sup>363</sup> And if he promises to do these things gladly, he should receive ordination. However, if he were to be uncertain and hesitant, he should be dismissed obtaining

363. Pseudo-Dionysios, *The Ecclesiastical Hierarchy* 1.4, PG 3:376B, "Οὐσία γὰρ τῆς καθ' ἡμᾶς ἱεραρχίας ἐστὶ τὰ θεοπαράδοτα λόγια."

nothing. For God states through His prophet, "You have rejected knowledge, and I will reject you, that you will be no priest to Me."<sup>364</sup> For if all we faithful combine singing, "I will meditate on Your commandments, I will not forget Your words,"<sup>365</sup> how much more this should be done by those who have been vested with the sacred stole.

#### CARTHAGE 18, 19

The eighteenth and nineteenth canons of the Council in Carthage commands him who is ordained to remember to keep the decisions of the Fathers (as much as they decreed concerning dogma and about the sacred canons), lest neglecting their decisions, in the last times he repents in vain, either being defrocked during the present or suffering inevitable punishment in the future.

#### CHAPTER 11:

WHEN A EUNUCH OR ONE WHO HAS MUTILATED HIS BODY IN ANOTHER WAY IS ORDAINED A BISHOP OR CLERIC

See the thirty-fourth chapter of Letter E.

#### APOSTLES 77, 78

The seventy-seventh and seventy-eighth canons of the Holy Apostles do not reject the one-eyed or the lame of leg from the priesthood. It states, "For it is not a mutilation of the body that defiles it,<sup>366</sup> but a pollution of the soul." For these things had been kept by an obscure law that required a perfect body to teach by visible means matters customarily spiritual. Indeed, even the one who has suffered some such thing after ordination was deprived of the priesthood. However, in our judgement, after ordination, the one who has been blinded in the eyes or has met with another kind of crippling occurrence is not turned away from the priesthood. For if one has both eyes blinded, or ears injured, or has a missing right hand, or is deprived of some other organ, the maiming of which impedes the exercise of priesthood, he will not be advanced into the priesthood, not because the limbs were disabled, but because they were infirm for the handling of Divine

364. Hos 4:6 (LXX).

365. Ps 118:16 (LXX).

366. The word "it" refers to the body.



Things. However, the one suffering these things after ordination is not deprived of the priesthood.

**CHAPTER 21:  
CONCERNING THE ORDINATION OF READERS**

See the sixth chapter of Letter A.

LAW

Let a reader be ordained after whatsoever time that he is able and knows how to read. However, let him advance no further into another ecclesiastical rank if he took a second spouse, or a first who is a widow or a woman that was divorced from her husband, being forbidden to do so either by civil law or by the sacred canons.<sup>367</sup>

**CHAPTER 25:  
CONCERNING ONE WHO IS LIABLE FOR SINS AND WHO  
HAS BEEN ORDAINED**

FIRST COUNCIL 9

The ninth canon of the First Council orders him that was ordained without examination, or after being examined and confessed before the ordination happened to fall into fornication and was ordained contrary to the canons, to enjoy nothing from the unlawful ordination. For he is defrocked after the discernment. For it is not the case, as some suppose, that as the divine bath makes the one who was baptized a new man, so also priesthood absolves sins committed before it. For the canon does not accept this. For the Church seeks what is blameless in everything, and not finding it, requires it.

THEOPHILOS 5

The fifth canon of Theophilus of Alexandria<sup>368</sup> not only expels such men from the priesthood, but also from the Church. However, he grants pardon to the one who ordained out of ignorance.

367. Justinian, *Novel* 123.14 § 2; *Epanagoge* 8.10, 12; *Basilika* 3.1.27 § 2, Scheltema, A1:92.

368. Theophilus, Patriarch of Alexandria (385–412).

See this canon also in the sixteenth chapter of Letter Π, and ninth and tenth canons of the Council in Neocaesarea.

**CHAPTER 26:**

**THAT ONE WHO WAS ILLUMINATED DURING AN ILLNESS MUST NOT BE ORDAINED**

See canon twelve of the Council in Neocaesarea, in the first chapter of Letter B.<sup>369</sup>

**CHAPTER 32:**

**CONCERNING CHRISTIANITY**

**CARTHAGE 108**

The 108th canon of the council prescribes that those who enter the faith “accept the practice of Christians by free choice” and will, but not through force nor out of necessity. For such things are neither certain nor legal. For virtue ought to be chosen, and not be forced or involuntary. However, saying “practice,” the canon revealed that the Christian must practice every virtue: temperance, chastity, and, more than others, love in all things. However, whoever does not live in this way is a Christian in name alone, but is not reckoned to be one in reality.

**BASIL 45**

Basil the Great in his forty-fifth canon states, “He that received the title of Christian, and that reviles Christ through the transgression of commandments, derived nothing from the mere name alone,” philosophizing with the Brother of the Lord, James the Great, who states, “My brethren, what does it profit a man who says he has faith, but has not works? Is his faith able to save him?”<sup>370</sup> For just as God is glorified by the gleaming light

369. The following is stated concerning this canon (Rhalles and Potles, 6:115):

The twelfth canon of the Council in Neocaesarea does not permit a man baptized on account of illness, and who recovered, to become a priest (since he that formerly pursued a pleasure-seeking and sensual life, chooses the good not by free choice but probably under duress), unless a concession should be made because of his zeal thereafter concerning the faith, and on account of a lack of men.

370. Jas 2:14.

of virtues among us, according to the passage, "Let your light shine before men, etc.,"<sup>371</sup> so when the darkness of the passions infects us, it comes to pass that God is blasphemed among the gentiles.

371. Matt 5:16.



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## About the Author

The Rev. Dr. Patrick Viscuso is a priest of the Greek Orthodox Archdiocese and a canonist specializing in marriage and gender issues. His doctorate in historical theology from The Catholic University of America concentrated on Byzantine and Oriental canon law, patristic studies, and church history. He also holds a Master of Divinity from Holy Cross Greek Orthodox School of Theology and a Bachelor of Science in Foreign Service from the Edmund A. Walsh School of Foreign Service, Georgetown University. Fr. Viscuso is the author of three books and a large number of scholarly publications in the field of late Byzantine canon law. His three books include the present work, an Orthodox canon law textbook, and a history of the 1923 Pan-Orthodox Congress. He is a specialist in marriage legislation and theology. His most recent articles focus on the relationship of marriage to ordination, purity issues, divorce, and women's superstitions in Late Byzantium. Fr. Viscuso is a professor of canon law (Antiochian House of Studies Residency Program), a frequent lecturer and presenter at academic conferences, and a past president of the United States Byzantine Studies Conference (2002–2003). Fr. Viscuso is also part of a team of scholars that will eventually translate the fundamental collection of Orthodox canon law edited by G. A. Rhalles and M. Potles. He is married and lives in northern Virginia with his wife Susan and son Sebastian.







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"VISCUSO'S GRASP OF LATE BYZANTINE LEGAL TEXTS IS UNPARALLELED." —TIA KOLBABA

Matthew Blastares compiled the most important legal collection of the late Byzantine Empire, a collection that Orthodox ecclesiastical judges continued to use in the Ottoman Empire. The collection ranges from church law that any Christian might recognize to laws that seem bizarre to the modern eye (such as multiple restrictions on menstruating women) to those that retain their relevance for contemporary debates (such as those related to homosexuality). No English translation of significant portions of the work has existed before this publication by Patrick Viscuso. I know of nobody more suited to introduce and translate these texts; Viscuso's grasp of late Byzantine legal texts is unparalleled. The result, not surprisingly, is a masterful and significant work of legal scholarship and a cogent, clear, annotated translation that belongs on the bookshelf of all who study Byzantium and its church. —*Tia Kolbaba (Rutgers University)*

As the helpful and detailed introduction makes clear, this text is more than a historical source; it also offers a deeper understanding of the physical existence of men and women in Orthodox theology and spirituality. —*Claudia Rapp (UCLA)*

Persons pursuing research in the area of canon law within the Eastern Church owe a debt of gratitude to Fr. Viscuso. The realization that many pivotal texts remain unexamined led him to the translation and publication of those included in this book. The translation of primary sources is especially critical to the study of Eastern canon law because of the limited availability of such important texts in the English language. Matthew Blastares, a crucial thinker within Late Byzantium, presents a synthesis of the legal works of his predecessors, laying the foundation of future developments. Students of Byzantine legal history, gender studies, and ecclesiastical law, as well as all those interested in these fields, will find this translation and analysis an extremely valuable resource. —*Lewis Patsavos (Holy Cross Greek Orthodox School of Theology)*



THE REV. DR. PATRICK VISCUSO is Professor of Canon Law at the Antiochian House of Studies, a past president of the United States Byzantine Studies Conference, and a specialist in Byzantine and Oriental canonical legislation. His other works include an Orthodox canon law textbook and a history of the Pan-Orthodox Congress of 1923. His most recent articles focus on the relationship of marriage to ordination, purity issues, divorce, and women's superstitions in late Byzantium.

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